APPENDIX B—FACTUAL SUMMARY

I. Preliminary Statement

The decree of the District Court (R. 2260–2265) enjoined thirteen defendants, Electric Bond and Share Company (hereinafter called Bond and Share) and twelve intermediate holding companies within the Bond and Share system, from violating the provisions of section 4 (a) of the Act. The Government has been notified that, subsequent to the filing of the District Court's decree, five of these defendants—United Gas Corporation, United Gas Public Service Company, Houston Gulf Gas Company, Nebraska Power Company, and Power Securities Corporation—have ceased to be holding companies within the Act. Such companies would automatically be released from the decree (R. 2261–2262), and would be entitled to apply to the District Court (which retained jurisdiction for the making of further orders) for an appropriate order to confirm such release (R. 2265). To simplify this summary of the factual situation, however, the facts are discussed as they existed at the time of the District Court's decree and as they appear in the record.

A number of other intermediate holding companies, as well as operating utility and non-utility subsidiaries, within the Bond and Share system, were allowed to intervene as defendants in the proceeding, but the Government sought no relief

against these companies, as they were not required by the terms of the Act to register.[1]

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[1] Seven of these intervening companies—Appalachian Electric Power Company, Atlantic City Electric Company, Easton Consolidated Electric Company, The Ohio Power Company, Pennsylvania Power & Light Company, The Scranton Electric Company, and The Washington Water Power Company—are predominantly intrastate holding companies, or predominantly operating companies, or both, and, by virtue of section 3 (a) of the Act and the Commission's rules and regulations thereunder, are exempted from any obligation, duty, or liability imposed by the Act upon such companies as holding companies (R. 269–270, 2219, finding 9). These seven companies are designated as exempt defendants (R. 269–270, 2218–2219).

Four other of the intervening companies—Central Arizona Light and Power Company, Indiana & Michigan Electric Company, Idaho Power Company, and The Montana Power Company—are public-utility companies, subsidiaries of holding companies within the Bond and Share system, but are not themselves holding companies (R. 266, 2219, finding 9). They are designated as operating defendants (R. 266, 2219). (Two of these operating defendants, Idaho Power Company and The Montana Power Company, were holding-operating companies at the time the Government's bill was filed, but had ceased to be holding companies before the case was heard by the District Court (R. 266, 2219–2220)).

Three other of the intervening companies—Spokane United Railways, Spokane Central Heating Company, and Montana Power Gas Company—are neither holding companies nor public-utility companies, but are non-utility subsidiaries of holding companies within the Bond and Share system (R. 266–267, 2220, finding 9). They are designated as non-utility defendants (R. 267).

Another holding company within the Bond and Share system, American & Foreign Power Company, Inc., having recognized the Act to the point of applying for and being granted an exemption under section 3 (a) (5), has not been made a party to this suit (R. 285).

Bond and Share is a holding company as defined in section 2 (a) (7) of the Act (R. 264, 2218), owning more than ten per cent of the outstanding voting securities of several of the other defendants which are holding companies as defined in the Act.

Seven other defendants included in the decree, American Gas and Electric Company (hereinafter called American Gas), American Power & Light Company (hereinafter called American Company), National Power & Light Company (hereinafter called National Company), Electric Power & Light Company (hereinafter called Electric Company), United Gas Corporation (hereinafter called United Company), Power Securities Corporation (hereinafter called Power Company), and Lehigh Power Securities Corporation (hereinafter called Lehigh Company), are also holding companies as defined in section 2 (a) (7) of the Act (R. 264–265, 2221–2222), owning more than ten per cent of the outstanding voting securities of other holding or utility companies.

These seven companies and Bond and Share are designated as holding defendants (R. 264–265, 2218).

The five other defendants included in the decree, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, Nebraska Power Company, and Pacific Power & Light Company, are holding companies as defined in section 2 (a) (7) of the Act (R. 265–266), owning more than ten per cent of the outstanding voting securities of public-utility companies. Inasmuch as these five defendants are themselves operating utility companies as well as holding com-

panies, they are designated as holding-operating defendants (R. 265–266, 2218–2219).

The thirteen above-mentioned defendants, which the District Court ordered to comply with the registration provisions, are holding companies within the Act (R. 264–266, 2218); have not registered under the Act (R. 270, 2230); have not applied for and are not entitled to any exemption under the terms of the Act (R. 155–156, 268–269, 2226–2228, 2230); and have been and are now engaged in activities, transactions, and the performance of contracts, in the ordinary course of business as conducted for many years last past, which are forbidden to non-registered companies by one or more provisions of section 4 (a) of the Act, and, unless otherwise ordered by final decree in this cause, intend to continue without registering to engage in such activities, transactions, and performance of contracts (R. 270, R. 2230, findings 29 and 30; see pp. 122–128, *infra*).

The decree of the District Court was therefore directed against Bond and Share and seven other holding defendants and five holding-operating defendants.

It is the purpose of this Factual Summary to explain defendants' activities and functions, carried on through the mails and the channels of interstate commerce, which fall within the authority of the federal government and justify the requirement of registration. A proper explanation of such activities and functions requires a fairly detailed examination of the origin, development, and operation of the Bond and Share system.

II. The Origin and Development of the Bond and Share System

A. THE ORIGIN OF BOND AND SHARE

Bond and Share was organized in 1905 by General Electric Company, the largest manufacturer of electric equipment in the United States (R. 278).

As early as 1890, Thompson-Houston Electric Company, one of the predecessor companies of General Electric, had become interested in the financing of local operating companies as a means of furthering the sale of electric equipment to such companies. It adopted the practice of taking the bonds of the operating companies in part payment for equipment. After it had acquired a sufficient portfolio of such bonds, it would deposit them with its subsidiary, United Electric Securities Company, as collateral for the issuance of United Electric's collateral trust bonds so that they might more readily be sold to the investing public. When the General Electric Company absorbed Thompson-Houston Electric Company, it continued this practice of financing local utilities as a means of furthering the sale of its products (R. 278–279).[2]

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[2] The investment bankers whose activities in the utility field became very pronounced in the 1920's were not particularly interested in the utility industry in its early days. Indeed, it has been observed that investment bankers have seldom played an important part in the early development of any of our great industries. (See Brandeis, Other People's Money, Chapter VII.) So, as in the early stages of other great industries, a device for the financing by the electric industry of purchases of equipment had necessarily to be found by the sellers of equipment.

Early in their development, the local operating companies suffered growing pains. Rapid expansion of the electric-utility industry caused many of the local companies to become overbonded in relation to their equity capital. Their debt structures could not withstand the shock of recurrent money panics. Other companies were strait-jacketed by closed mortgages which prevented new bond financing. To maintain and increase its sale of equipment, General Electric had to accept stocks as well as bonds in payment for equipment. There was, however, no ready market for the stocks which General Electric had acquired through the sale of equipment. Retention of the stocks would have been an involuntary investment in the operating companies. Hence, Bond and Share was organized by General Electric to meet General Electric's problem of disposing of its stock holdings by using them as the basis for issuing other securities (R. 279–280).

Upon the organization of Bond and Share, General Electric transferred to it securities (mostly of local electric companies) having an appraised value of $3,139,522 and cash in the sum of $1,301,076, in exchange for all the capital stock of Bond and Share consisting of 20,000 shares of 5 per cent preferred stock and 20,000 shares of common stock, both having a par value of $100 per share (R. 733). General Electric continued to own and control virtually all the common stock of Bond and Share down to 1925, when it distributed its Bond and Share common stock among its own stockholders (R. 733). Indeed, except for relatively small amounts of Bond and Share preferred stock sold by General Electric, no public issue of Bond and

Share's own stock was made prior to 1915, and no large issue of preferred or common stock was made until 1927 (R. 735).[3]

Instead of being used, as the earlier subsidiary securities corporations of General Electric had been used, as a vehicle for the disposition of securities acquired by General Electric in payment for equipment, Bond and Share was utilized by General Electric for the purpose of acquiring a controlling interest in numerous scattered operating companies throughout the country. Bond and Share adopted the practice of turning over all, or substantially all, of the voting securities of the operating companies which it acquired to sub-holding companies in exchange for the securities of such sub-holding companies. It then proceeded to sell to the public the securities of the sub-holding companies, retaining, however, a minority voting interest in such companies sufficient to assure control. It also caused non-voting securities, or securities with unequal voting rights, of the operating com-

[3] At the beginning of 1915, Bond and Share had a share capital of $10,000,000—$5,000,000 represented by preferred stock and $5,000,000 by common, nearly all of which had been originally subscribed by General Electric (R. 735). At that time General Electric continued to own virtually all of the common stock (R. 733). At the beginning of 1927, Bond and Share had a share capital of $50,000,000—$25,000,000 in preferred stock and $25,000,000 in common stock (R. 735). Up to 1927, Bond and Share's *own* capitalization as compared to that of the intermediate holding companies remained relatively small; its preferred stock never very substantially exceeded the amount of its common stock subscribed in *cash* (R. 735). Thereafter its capitalization mounted rapidly as the result of stock dividends, corporate readjustments, and public financing (R. 735–739).

panies to be sold to the public. Through such sales, Bond and Share realized cash, often in an amount equal to and sometimes in excess of the cost to it of the securities of the operating companies so acquired (R. 280–281, 915 f. 2744, 935–936). Bond and Share and its subsidiary American Gas then exercised, for a fee, supervision over the operations and financial affairs of all these companies, both holding and operating (R. 281, 436, 438); and General Electric, by contractual arrangements with Bond and Share (R. 1606, 1607 f. 4820), thus secured for itself a full share of the equipment business of the Bond and Share system.

From the very beginning, Bond and Share did not to any appreciable extent or for any extended period tie up its own funds in financing the development of local operating companies. The skilled financial management of Bond and Share soon discovered that a very large percentage of the capitalization of the operating companies could be sold directly to the public in the form of preferred stock and open mortgage bonds. Indeed, it was found that 50 to 60 per cent of the capitalization of operating companies could be sold to the public even without the use of a diversified collateral trust indenture, and that 20 to 25 per cent of the capitalization could be sold to the public in the form of preferred stock, leaving at most only 20 to 25 per cent of the capitalization to be represented in the form of common stock (R. 280–281).

That, in brief, was the origin of Bond and Share, with a modest capitalization of $4,000,000. Its development and expansion takes place through the formation of its principal intermediate holding companies, of which American Gas was the first.

B. THE DEVELOPMENT OF AMERICAN GAS

In 1906, the year following its organization, Bond and Share, at no cost to it, obtained an option [4] to acquire all the securities of the Electric Company of America, a holding company controlling utility properties in New Jersey, Pennsylvania, New York, West Virginia, Ohio, Indiana, and Illinois. The Electric Company of America had been organized in 1899 and was in receivership in 1906 (R. 428).

To finance the exercise of its option, Bond and Share organized American Gas. American Gas issued collateral trust bonds in an amount of $6,282,000 in payment for the properties in receivership, and issued, through Bond and Share, $1,200,000 preferred stock and $2,500,000 common stock to obtain cash for the improvement of the properties acquired, and to cover promotion profits and expenses. Of the stock so issued, $1,200,000 preferred and $1,200,000 common were sold to the public for $1,200,000 cash. One million dollars cash went for improvements. The remaining cash of $200,000 was used to pay certain expenses in connection with the financing, including a banker's fee of $30,000 to Bond and Share, and

[4] The minutes of the Bond and Share directors meeting on July 12, 1906, reported in the Federal Trade Commission reports, expressly state that the option simply provided for a forfeiture of a $25,000 deposit ($12,500 deposited by Bond and Share and a like amount by General Electric), if the purchase were not made. Report of the Federal Trade Commission to the United States Senate, 70th Congress, 1st Session, Senate Doc. No. 92, Part 22, p. 814. (These reports are hereinafter referred to as the Trade Commission Report.)

to finance the acquisition of additional securities of electric utilities for the account of the new company. The balance of the common stock, with a par value of $1,300,000, took care of promotion profits and expenses, including the issuance to Bond and Share, without additional cost to it, of 4,700 shares of common stock having a par value of $235,000 (R. 428–429).

To state it simply, Bond and Share carried through the organization of American Gas without any net outlay on its part and received just short of ten per cent of the voting securities of American Gas and a banker's fee of $30,000 in cash (less whatever it paid for 156 additional shares of common stock).[5]

In the course of building up and managing the American Gas companies, American Gas acquired substantial amounts of the senior securities of its operating subsidiaries. From time to time it has reduced substantially its investment in such senior securities, without parting with its voting control (R. 915 f. 2745).

In the acquisition and reorganization of the operating subsidiaries of American Gas, the ledger values of the plants and investments of the reorganized or successor companies were written up in

[5] There is nothing in the record to indicate what, if anything, Bond and Share paid for 156 shares which it received in addition to the 4,700 shares which it took as part of its reorganization fee. The common stock was sold publicly in units consisting of one share of preferred and one share of common stock at a price equal to the par value of one share of preferred (R. 428). Consequently, it is unlikely that Bond and Share paid any substantial sum for the 156 shares of common stock.

an amount found by the Federal Trade Commission to be more than $85,000,000 in excess of the values of the same assets as they appeared upon the books of the predecessor companies from which they were transferred (R. 929).[6] The write-ups were made without any detailed appraisal of the properties in question and in some cases in the absence of any engineering determination of value whatsoever. In many instances securities were issued against such inflated values to the full amount thereof (R. 914–915).

For example, American Gas in 1926 formed the Appalachian Electric Power Company, transferring to it properties and securities of electric companies operating in Virginia, West Virginia, and Kentucky. American Gas took as consideration all the outstanding common and a majority of the preferred stock of the new corporation, selling a portion of the non-voting preferred to the public but retaining all voting common (R. 761, 1901

[6] The defendants admitted for the record that the write-ups of assets of operating subsidiaries of American Gas, as well as assets of the operating subsidiaries of the other sub-holding companies hereinafter referred to, were in each case substantial. They did not, however, admit the accuracy of the Federal Trade Commission's determination of the amount of such write-ups (R. 916–917). However, the record contains no statement of the amount of such write-ups which are admitted by the defendants. The Federal Trade Commission's figures, therefore, may be accepted for the purpose of this proceeding as an approximation. Indeed, it appears that in the case of American Gas, the amount of the write-ups of three operating companies reported by the Federal Trade Commission was supplied to it by American Gas itself, the Commission having made no independent investigation of these companies (R. 929).

f. 5703). The plants and investments of the predecessor companies whose assets were transferred to Appalachian Electric Power Company were found by the Federal Trade Commission to have been carried on the books of such predecessors at a total value of $72,621,455. The same assets were set up on the books of Appalachian Electric Power Company at $139,039,648. The assets involved in the merger were thus written up in an amount found by the Commission to be $66,418,192.18, or 91.4 per cent of their former ledger value (R. 929). This write-up (like others in the Bond and Share system) was made without a detailed appraisal and in the absence of any engineer's determination whatsoever (R. 914).[7] In

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[7] The write-up was investigated by the Federal Trade Commission. Mr. Argabrite, vice president of American Gas, was called to testify regarding how the figures had been arrived at. He stated: "As a matter of fact, there was no real inventory made, Judge Healy. What we made was simply what we call a check-up; not an appraisal. It is not the kind of an appraisal that would be made for the purpose of furnishing information to regulating bodies for rate-making purposes, and there was no reason to do that, for it was not made for rate-making purposes, or anything of that sort. It was not made to submit or be submitted to any commission, and no record was made by me or kept by me that you could go back over and check up. * * *

"My report to the directors was written on a piece of paper about 2 inches wide. And the report was given very much in the same way that we are going over it here. We discussed it for about an hour, and I went over with them how I had arrived at it." Trade Commission Report, Part 72–A, p. 257.

The Federal Trade Commission Report further states (*Id.* at 257–258): "In this connection the testimony devel-

1933 the ledger value of Appalachian Electric Power Company plant and investment was written down $42,590,485.29 (R. 930), but only after millions of dollars of securities had been issued (R. 1869, 1894). Of the original write-up, $23,827,707 still remain.

The properties of American Gas, actually the most successful unit in the Bond and Share system (R. 912–913, 910), were never geographically diversified and are concentrated in the east

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oped that no valuation of the Appalachian Electric Power Co.'s property had been made for rate-making purposes up to that time by any State commission; and that the Virginia and West Virginia commissions do not undertake the supervision or pass upon the issuance of securities. As will presently be developed, this write-up was capitalized through security issues of Appalachian Electric Power Co. * * *

"Since the interests of American Gas & Electric Co. in the properties, stocks, and other net assets which it caused to be transferred to the new Appalachian Electric Power Co. in consideration for the securities enumerated above represented an investment of $62,690,900, the cost to the Appalachian Co. of $112,129,504 for this interest was therefore $49,438,604 more than its cost to American Gas & Electric Co. American Gas & Electric Co. received the proceeds from the sale of the $35,000,000 principal amount 5-percent bonds of Appalachian Electric Power Co. and also sold some of the $7 preferred stock of that company, as a result of which it reduced its investment in the Appalachian situation from $62,690,900 to $17,588,607 by the end of 1928, the close of the examination. * * *

"As a result of all of the foregoing transactions, American Gas & Electric Co. was able to materially reduce its investment in the Appalachian situation and still exercise the same degree of control over the properties as it did before the merger and consolidation."

and east-central states (R. 576–583). From time to time American Gas has disposed of certain securities originally acquired from the Electric Company of America, generally those of companies conducting a non-utility business or serving communities not contiguous to those served by companies whose securities it retained (R. 430). The activities of the operating companies in the American Gas group are confined to the contiguous states of Michigan, Indiana, Ohio, Pennsylvania, New Jersey, West Virginia, Virginia, Tennessee, and Kentucky (R. 576–610). All but two of the companies in the American Gas group are interconnected by transmission lines (R. 432 f. 1292). In general, American Gas has sought to develop as an integrated system, has purchased control of only such companies as could be interconnected with its system, and has avoided the acquisition of scattered properties and non-utility companies (R. 340).

Bond and Share organized American Gas (R. 428). The present chairman of the board of Bond and Share is chairman of the board of American Gas (R. 434 f. 1301). His predecessor, who resigned in 1933, likewise held both positions and was the financial advisor of American Gas, taking a leading part in outlining financial programs for American Gas and its subsidiaries (R. 466 f. 1398). The president of American Gas is a director of one other intermediate holding company, and has in the past served as director of three other intermediate holding companies in the Bond and Share system (R. 434, 1017), although his personal hold-

ings in these other companies are not substantial.[8] Bond and Share has from time to time increased its common stock holdings in American Gas through stock dividends and stock purchases (R. 853). At some time between 1928 and 1934 (during which period it also increased substantially its holdings in the other principal intermediate holding companies) Bond and Share purchased over 145,000 shares American Gas common at an average cost exceeding $129 per share (R. 843). The stock, now selling below $30, sold during that same period for as low as $15 per share (Moody's P. U. 1935, p. 2213). Bond and Share now owns 17.51 per cent of the voting securities of American Gas (R. 284). Bond and Share has voted approximately 25 per cent of the total number of shares represented at the meetings of American Gas (R. 434). No comparable large block of stock is voted at the meetings except by the management exercising proxies (R. 1903). There has never been a contest over proxies, nor any organized opposition to the management upon which Bond and Share has always been represented (R. 434–435).

Bond and Share has always handled the public offering and sale of the securities of American Gas, and has taken charge of the customer ownership campaigns for the sale of the preferred stock

[8] On March 1, 1935, the President of American Gas held 501 shares of National Company common, 246 shares of American Company common, 128 shares of American & Foreign Power preferred, and 2,800 option warrants of American & Foreign Power which are of little or no value. (Form 10, Registration Statement under Securities and Exchange Act, filed with the Commission March 1, 1935.)

of American Gas subsidiaries (R. 463–464). But American Gas, being the first of the intermediate holding companies organized by Bond and Share, developed its own management and engineering services for its subsidiary companies (R. 436; see pp. 75–78, *infra*). Beyond this, the relationship of American Gas to Bond and Share is not essentially different from that of the other holding defendants to Bond and Share.

C. THE DEVELOPMENT OF AMERICAN COMPANY

The next major development of the Bond and Share system was the promotion of American Company in 1909. Substantial interests in certain electric companies in Oregon and Kansas had been acquired by Bond and Share. Bond and Share entered into a syndicate agreement with investment bankers and others under which Bond and Share as syndicate manager was to acquire the securities of the Kansas and Oregon companies for the purpose of turning them over to a new company. To carry out this purpose Bond and Share organized American Company (R. 302).

At an approximate cost of $2,000,000 the syndicate acquired all the common stock and certain bonds of the Kansas and Oregon companies. Bond and Share made a profit of $55,090 on the securities which it turned over to itself as syndicate manager (R. 936, 302). The securities so acquired at a cost of $2,000,000, together with $500,000 in cash, were transferred by the syndicate to American Company in exchange for $2,500,000 par value of preferred stock and $5,500,000 par value of common stock (R. 302).

The syndicate sold to the public all of the preferred stock and $2,000,000 par value of the common stock of American Company for $2,500,000. Thus the syndicate, after reimbursing themselves for the $2,500,000 in securities and cash which they had put up, retained common stock of the par value of $3,500,000, less stock of the par value of $798,100 delivered to brokers in payment of commissions. Bond and Share had a 60 per cent participation in the syndicate, and the bankers 40 per cent. Pursuant to the syndicate agreement, some Bond and Share officers and employees shared in the bankers' participation as well as other persons and banks which Bond and Share deemed desirable to interest in the project.[9] At the completion of the deal, Bond and Share had received 16,211 shares of the American Company common, having a par value of $1,621,100 (which cost Bond and Share nothing) and a cash profit of $55,090 (R. 302–303, 935–936).[10] Bond and

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[9] In other instances involving the issuance of securities of the holding defendants, Bond and Share also arranged to give certain officers, directors, and employees of its holding and operating companies (both of the issuing companies and of others) participation in the bankers' purchasing syndicate (formed to acquire and sell such securities) upon the same terms given the bankers (R. 420–421).

[10] The plan of organization of American Company and subscription agreement provided (R. 931–934):

(1) that neither the new corporation nor anyone else should have any right to question any contract or transaction through which stock should be issued, although there might result to Bond and Share, as banker, or to anyone else, a profit therefrom;

(2) that Bond and Share, as banker, instead of delivering shares of stock to the subscribers in the new corporation,

Share retained also the friendly and amenable attitude of people who shared, through the apparent largess of Bond and Share, the bankers' profits.[11]

Since its organization, American Company (through the agency of Bond and Share) has acquired controlling interests in electric companies scattered through the states of Arizona, Florida, Kansas, Missouri, Minnesota, Montana, Idaho, Nebraska, Iowa, New Mexico, Wisconsin, Washington, Oregon, and Texas (R. 341, 1204, 937 ff.). At the time of the transfer of the acquired properties to new corporations organized for the purpose of taking title, and in the course of subsequent corporate reorganizations, the plant and investment accounts of eight of the seventeen operating subsidiaries of American Company were written up in an amount found by the Federal Trade Commission to be approximately $80,000,000 in excess of the cost of such properties or their ledger values on the books of the companies from whom they were acquired (R. 923).

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could deliver certificates in a voting trust, the terms and duration of which were to be determined by Bond and Share alone;

(3) that Bond and Share, the banker, assumed no fiduciary relationship of any kind nor any obligation to cause the plan to be undertaken or carried out.

[11] Such transactions give point to the statement made by Congressman Rayburn at the time he introduced the Holding Company bill in the House of Representatives: "Too much of the investor's money has gone to purchase securities of other utilities at inflated values, frequently from corporate insiders, and too little to build up the utility enterprise" (Hearings before the Committee on Interstate Commerce, United States Senate, 74th Congress, 1st Session, on S. 1725, p. 68).

For example, American Company organized Florida Power & Light Company in 1925 to take over a number of Florida utility companies whose securities American Company had acquired, during 1924 and 1925, through the agency of Bond and Share (R. 942). The Federal Trade Commission found that, immediately prior to the transfer, the ledger value of plant and investment on the books of the companies which were to be taken over by the Florida Company was $33,789,000.48 (R. 923). This ledger value became $64,021,008.33 on the books of the Florida Company (R. 923). On the basis of this new ledger value, the Florida Company issued to American Company all of its outstanding preferred, second preferred, and common stock (R. 942). American Company retained all of the common stock and passed on to the public the greater part of the non-voting preferred (R. 771, 942). The total write-up, as found by the Trade Commission, amounted to $30,232,007.85 or 89.4 per cent of the ledger value on the books of the predecessor companies (R. 923).

Similar operations occurred in connection with the organization of Nebraska Power Company. In 1917 Bond and Share organized Nebraska Power Company and transferred to it all of the properties and securities owned by Omaha Electric Light and Power Company, which had been acquired by Bond and Share from time to time (R. 940–941). Nebraska Power Company issued to Bond and Share common stock, preferred stock, second preferred stock, and notes. Bond and Share immediately turned these securities over to American Company in exchange for preferred and common stock and demand notes of American

Company (R. 941).[12] The Federal Trade Commission found that the properties transferred to Nebraska Power Company, carried on the books of predecessor companies at $6,632,484.07, were set up on the books of the newly formed company at $14,020,000, a write-up of $7,387,515.93 or 111.3 per cent (R. 923).

The cases cited are not hand-picked or exceptional but are quite typical of the technique employed in the development of American Company. Similar technique (R. 937, exhibit 34) was employed by American Company under the guidance of Bond and Share in the transfer of properties to its subsidiary companies, Washington Water Power Company, Inland Power & Light Company, Kansas Gas and Electric Company, Minnesota Power & Light Company, Pacific Power & Light Company, and Texas Power & Light Company, where write-ups occurred amounting respectively, as found by the Federal Trade Commission, to 66.4 per cent, 69.7 per cent, 85.7 per cent, 106.6 per cent, 119.1 per cent, and 341.4 per cent (R. 923).[13]

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[12] At the suggestion of the chairman of the board of American Company, who was also the chairman of Bond and Share, the American Company in 1922 voted to sell not exceeding 250 shares of Nebraska Power common stock to each of the local directors of Nebraska Power at $10 per share, although it appears that the stock had been purchased from resigning directors at a cost to American Company of $15.50 per share (R. 948). Although American Company reserved the right to repurchase the shares at $25 per share, it does not appear that the directors ever undertook to serve the company for a stated period.

[13] There may be some question as to the method of computing write-ups and as to their business and moral justifi-

American Company has been guided in all of its activities by Bond and Share. It was organized by Bond and Share (R. 302). The majority of its first board of directors were officers or directors of Bond and Share (R. 303). Until November 25, 1935 (see pp. 64–66, *infra*), Bond and Share officers and directors sat on its board of directors (R. 327). In 1934, a majority of the membership of the executive committee of American Company's board of directors was composed of Bond and Share directors (R. 1032). Up to November 25, 1935, American Company had no officers or employees save those supplied and paid directly by Bond and Share R. 330). Bond and Share supplied all the organization plans (R. 341, 1204, 937ff.), and formed all new American Company subsidiary operating companies and directed their organization. Up to November 25, 1935, most of the permanent boards of directors of American Company subsidiaries included one or more of the officers, directors, or senior employees of Bond and Share (R. 327, 1035). Up to that date, Bond and Share for a fee supplied financial, management, engineering, and other services to American Company and its subsidiaries; and Bond and Share's subsidiary, Ebasco, now renders similar services to those subsidiaries (R. 330, 335, 396–397).

Since the organization of American Company, Bond and Share has acquired additional voting securities in that company through stock dividends, capital readjustments, exchange of securities, and

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cation. But there can be no question that the investor and consumer should be informed of the circumstances surrounding these write-ups. Such is the intent and purpose of the registration provisions of the Holding Company Act.

cash purchases (R. 303–304). From 1909 to 1928 Bond and Share purchased for cash only 14,025 shares of American Company common at an average cost of $23.71 per share (R. 851). But some time between 1928 and 1934, Bond and Share purchased 105,701 shares of American Company common at an average cost of $75.93 per share (R. 851). During that period the stock sold as low as $3 per share and is currently selling under $6 per share (Moody's P. U. 1935, p. 1482). Bond and Share now owns 20.7 per cent of the voting securities of American Company (R. 304 f. 910) and casts 39 per cent of the votes cast at annual meetings (R. 326). The remaining outstanding voting securities are held by more than thirty thousand persons (R. 997), and there is no stockholder comparable in size to Bond and Share (R. 997). There has never been any contest over proxies, which have been regularly nominated by the Bond and Share management (R. 327, 990).

D. THE DEVELOPMENT OF AMERICAN & FOREIGN POWER COMPANY

The next major development of Bond and Share occurred in 1924 when American & Foreign Power Company, Inc. was formed to extend Bond and Share's utility empire to the West Indies, to South and Central America, to Mexico, and to India and China in the Far East (Moody's P. U. 1935, pp. 1407, 1409). American & Foreign Power, having recognized the Act to the point of applying for and being granted exemption as a holding company under section 3 (a) (5) (R. 285), has not been made a party to this suit (R. 285). Hence a review of its foreign ventures is not attempted here.

However, American & Foreign Power cannot be wholly ignored. Its activities, and Bond and Share's activities in connection therewith, have a substantial effect upon the investments of the 130,000 stockholders of Bond and Share (R. 301). Bond and Share owns 44.6 per cent of the voting securities of American & Foreign Power (R. 2085). Bond and Share has, in these troubled days, a security investment in this far-flung international venture which is carried on Bond and Share's books at 230 million dollars (R. 855). Bond and Share's direct cash investment alone in the securities of American & Foreign Power amounts to more than $180,000,000, a much greater cash investment than it has made in all its domestic utility enterprises combined (R. 855, see pp. 46–48, *infra*). American & Foreign Power is indebted to Bond and Share in the sum of forty-two and a half millions and has bank loans outstanding of thirty millions (R. 741). These loans from Bond and Share and banks aggregating seventy-two and a half millions all fall due in October and November 1938. The maturity date of over half of these loans has already been extended at least once (R. 742–743). The securities of American & Foreign Power are sold in the United States under the auspices of Bond and Share (R. 1879, 1883, 1885, 1893, 422–423).

Bond and Share's investment in American & Foreign Power has been an important item on its balance sheet. In March, 1929, in connection with the issuance of large amounts of new Bond and Share securities in exchange for old securities of Bond and Share and for the securities of the Electric Bond and Share Securities Corporation.

Bond and Share's investment in American & Foreign Power was written up from $93,000,000 to $493,000,000. The reappraisal of the value of Bond and Share's investment in American and Foreign Power is sought to be justified on the ground that such reappraisal was only 75 per cent of the then current market value (R. 856). But by December 31, 1931, the market appraisals had been sufficiently deflated so as to induce the board of directors of Bond and Share to eliminate this write-up (R. 856). Before such elimination, however, Bond and Share had, in July, 1929, sold a substantial block of its own common stock to its shareholders at $85 per share (R. 734). This is equivalent to $255 per share for the present stock which was issued in March, 1932, on the basis of one share of new stock for three of old (R. 739). The present stock, for which the shareholder paid, in July, 1929, the equivalent of $255 per share is now selling for less than $10 per share.

E. THE DEVELOPMENT OF ELECTRIC COMPANY

Over a period of years prior to March, 1925, Bond and Share had acquired (1) a minority of the outstanding voting securities of Utah Securities Corporation, which owned securities of electric-utility companies operating in Utah and Colorado,[14] (2) a majority of the outstanding voting

[14] Bond and Share had organized all of these companies, including Utah Securities Corporation, which had been organized in 1912, and since that date had completely serviced all of them. Immediately prior to the organization of Electric Company, a majority of the board of directors and of the executive committee of Utah Securities Corporation were officers or directors of Bond and Share (R. 954–956).

securities of Power Company, which owned securities of an electric-utility company operating in Idaho and Oregon, and (3) substantially all the outstanding voting securities of two operating companies, New Orleans Public Service, Inc., and Dallas Power & Light Company, with properties in Louisiana and Texas (R. 309). A meeting of the Bond and Share board on March 11, 1925, adopted a resolution providing for the formation of Electric Company to take over these securities held by Bond and Share. The chairman stated to this meeting that Bond and Share, "with its limited capital, could not expect to keep as a permanent investment holdings of this character and magnitude," and "that plans had been under consideration for a very considerable length of time * * * for the organization of a new holding or investment company" (R. 964 f. 2892). The chairman's statement forcibly illustrates Bond and Share's intention not to tie up any more of its own capital in its subsidiaries than necessary. As principal participant and manager of a syndicate, Bond and Share organized Electric Company as successor to the Utah Securities Corporation and transferred to Electric Company the securities held by Bond and Share in Power Company, New Orleans Public Service, Inc., Dallas Power & Light Company, and certain other companies (R. 309).

In return for securities which had cost Bond and Share $21,703,547, Bond and Share received from Electric Company $26,010,442 in cash, the cancellation of Bond and Share's debt of $440,564 to Utah Securities Corporation,[15] 534,722 shares of

[15] This claim arose by reason of duplicate cash payments made to Bond and Share by two subsidiary companies for

common stock of Electric Company, and 800,000 option warrants to purchase common stock at $25 a share (R. 960, 965).

At the same time, Bond and Share subscribed for 120,000 shares of second preferred stock of Electric Company at $94 per share and immediately sold 110,520 shares of this stock (together with 55,260 shares of common stock and 442,080 option purchase warrants to purchase common stock of Electric Company) to certain of its officers, directors, and employees, and to other parties who might be helpful to it as participants in the reorganization syndicate, at a price of $94 for one share of second preferred, one-half share of common, and four option purchase warrants (R. 960 f. 2880, R. 966).[16] As part of the organization agreement, the investment bankers who participated in the syndicate acquired 400,000 shares of $7 preferred stock, for which they paid Electric Company $94 per share (or a total of $37,600,000), and 200,000 shares of common stock, which were contributed by Bond and Share. The bankers immediately sold this stock to the public for $102 per unit consisting of one share of preferred and one-half share of

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the same services (R. 972). The propriety of eliminating such a claim in a corporate reorganization, which is also quite profitable in other ways to the parent holding company directing the reorganization, may be open to question.

[16] At the time this transaction was authorized by the board of Bond and Share, the chairman of the board stated "his desire to purchase approximately 50,000 shares of such preferred stock for distribution in like manner" (R. 966). The board authorized the purchase of 75,000 shares to be distributed "to such persons, firms and corporations as the Chairman shall select" (R. 970).

common (R. 960–961), thus raising from the public more than $40,000,000 to carry through the organization of Electric Company.

At the completion of the organization of Electric Company, Bond and Share held 299,772 shares of its common stock and 50,000 shares of its preferred stock, representing 16.9 per cent of the outstanding voting securities of Electric Company, and 320,000 option purchase warrants (R. 309, 961). Thus Bond and Share had recouped in cash the entire cost of its investment (aggregating nearly $22,000,000) in the underlying properties now transferred to Electric Company; had made a cash profit of $4,000,000; had discharged a subsidiary's claim of $440,000; had taken care of its directors, officers, employees, and other parties on its "preferred list" who might be helpful; and had withal managed to retain a substantial and controlling interest in Electric Company.

The securities which Electric Company had acquired upon its organization appeared upon its books at a value of $66,500,000. This sum was found by the Federal Trade Commission to be more than $41,000,000 in excess of the ledger values of such securities on the books of the companies from which they were acquired or the cost of these securities to such companies (R. 925). These write-ups were, in part, a reflection of earlier write-ups of the assets of the constituent companies whose securities were transferred to Electric Company. Thus the Commission found that of the $73,000,000 in book value of assets of Utah Power & Light Company, over $33,000,000 were represented by write-ups. Some $29,000,000 of this write-up were

reflected on the books of Electric Company at the time of its organization (R. 925). One may question whether the wholesale and profitable unloading of securities upon the public, previously described, could have been accomplished in the absence of such inflation of values.[17]

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[17] This is the sort of financing which is described by Congressman Eicher in his Additional Views submitted with the Report of the House Committee on Interstate and Foreign Commerce on the holding company bill: "Although in some instances the regional holding company tying together small plants and distributing areas may have served to draw capital into the actual industry, there has been no evidence adduced that the giant holding company has attracted any considerable money into the industry. The money that has gone into the giant holding company has not gone into the capital improvement of the industry. The proceeds of sales of holding-company securities have rather been used to purchase securities of other utilities at inflated values, frequently from corporate insiders, and not to build up the capital plants of utility enterprises.

"In 1929 when bankers and corporate insiders were distributing holding-company securities to the public, the aggregate market value of electric utility-holding-company securities was estimated at $19,000,000,000. But that $19,000,000,000 did not go into generators and transmission lines for the electric-utility industry; that entire $19,000,000,000 did not represent an investment of more than $3,000,000,000 in capital plant and equipment. The difference went to the bankers, the speculators, and corporate insiders. These figures explain the losses that the investors in holding-company securities have had to bear. These losses the Government did not cause and cannot restore." (Report of the Committee on Interstate and Foreign Commerce, House of Representatives, 74th Congress, 1st Session, Report No. 1318, p. 51. See also, Government's brief, pp. 136–137 n.)

Subsequent to its organization, Electric Company, through the agency of Bond and Share, acquired securities of utility companies operating in Arkansas, Mississippi, and Louisiana, and transferred these properties to three new companies, Arkansas Power and Light, Mississippi Power and Light, and Louisiana Power and Light (R. 961–963). This deal alone involved write-ups, as found by the Federal Trade Commission, of almost $25,000,000, the new ledger values being almost double the ledger values or cost prior to the write-ups (R. 925). By the sale of bonds and preferred stock to the public, through the agency of Bond and Share, which reserved a commission of 1½ per cent of the principal amount thereof, Electric Company was enabled to realize the greater part of its investment in these companies. In the case of Arkansas Power and Light, Electric Company realized 73 per cent of its investment (R. 962–963), while retaining absolute control through its 100 per cent common stock holdings.

Electric Company has not confined its interests to one region or locality but has acquired a controlling interest in utility properties scattered throughout the United States. It controls properties in the twelve states of Oregon, Florida, Texas, Utah, Alabama, Idaho, Mississippi, Nevada, Arkansas, Oklahoma, Louisiana, and Wyoming (R. 522–552, 622–633).

Electric Company has been guided in all of its activities by Bond and Share. It was organized by Bond and Share (R. 309). Its first permanent board of fourteen directors contained six directors, including its chairman, who were directors of

Bond and Share. Five of the remaining eight were directors of one or more of the other intermediate holding companies in the Bond and Share system. And, up to November 22, 1935 (see pp. 64–66, *infra*), a majority of the executive committee of Electric Company were at all times officers or directors of Bond and Share (R. 310). Up to November 22, 1935, Bond and Share supplied all the officers and employees of Electric Company, who were at the same time officers and employees of Bond and Share. These officers and employees were paid exclusively by Bond and Share, and Bond and Share in turn collected a service fee from Electric Company (R. 330). Whenever any new subsidiary operating company of Electric Company was organized, Bond and Share directed the organization and prepared all of the organization plans (R. 341). The directors of newly organized operating companies were chosen from the staff of Bond and Share or the directors of Electric Company or members of the law firm chosen to perform its legal services (R. 341-342). The permanent board of directors of the operating companies usually included, up to November 25, 1935, one or more officers or senior employees of Bond and Share (R. 342). Bond and Share provided financial, management, engineering, and other services for Electric Company and its subsidiaries until November 25, 1935 (R. 330, 335). Following that date Ebasco has continued to perform similar services for the operating subsidiaries of Electric Company (R. 335).

Since the organization of Electric Company, Bond and Share has acquired additional voting securities in that company through stock purchases

and the exercise of rights to subscribe for, and the underwriting of sales of, additional stock in the year 1931 (R. 310). From 1928 to 1934 Bond and Share purchased 250,401 shares of common stock at an average cost per share of $49 (R. 851). The stock is now selling at less than $12 per share and did sell during the same period as low as $2¼ (Moody's P. U. 1935, p. a98). Bond and Share now owns 47.2 per cent of the voting securities of Electric Company (R. 310) and votes approximately 77 per cent of the shares represented at annual meetings (R. 326). The remaining shares are held by more than 30,000 people, no one of whom owns as much as 1 per cent of the total (R. 1001).

F. THE DEVELOPMENT OF NATIONAL COMPANY

The development of National Company is essentially similar to that of Electric Company just described. In the years prior to 1925, Bond and Share had acquired a controlling interest in numerous utilities throughout the country. It had gathered these properties together in several intermediate holding companies, each intermediate company usually confining its activities within a group of contiguous states. As we have seen, some of these companies were merged to form Electric Company. The others were used as a nucleus to form National Company. The merger in each instance formed the basis for the issuance of new securities to the public (R. 1871, 1889).[18]

[18] It has been urged that the principal intermediate companies in the Bond and Share system were formed in order to afford the investor geographic diversification (R. 964). But the conclusion is justified that the diversification was of

The present National Company was organized by Bond and Share to merge two of its subsidiary holding companies, the old National Company, which controlled properties in Alabama, Texas, Arkansas, and Tennessee, and United Investors Securities Company, which controlled properties in North and South Carolina (R. 319).[19]

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a most haphazard sort designed not so much to protect the investor as to release the funds that Bond and Share had tied up in widely scattered utility companies while at the same time perpetuating its control over, and its highly profitable service arrangements with, these companies. The highly speculative securities of Bond and Share's intermediate holding companies could never have met the investment requirements of a prudent investor. Cf. Bonbright and Means, The Holding Company (1st ed., 1932), 107–108.

[19] The old National Company had been formed by Bond and Share in 1921 to acquire the utility properties of American Cities Company, then in receivership (R. 982). Bond and Share received a substantial portion of the common stock of the old National Company on its formation for "services," "cash," and "sundry securities" (R. 983). After disposing of part of the stock so acquired to certain officers and directors of Bond and Share and of the old National Company and to others, Bond and Share retained 16 per cent of the outstanding voting securities of old National Company (R. 983).

United Investors Securities Company was a holding company organized by Bond and Share to take over the properties of its subsidiary, Carolina Power & Light Company, for the purpose of facilitating their merger with the properties of old National Company into new National Company (R. 984–985). Bond and Share had, since 1908, been acquiring and consolidating properties in North and South Carolina into the Carolina Power & Light Company. At all times since that date, Bond and Share had completely serviced Carolina Power & Light Company (R. 983).

Upon the completion of new National Company, Bond and Share held 20.64 per cent (525,240 shares) of its outstanding voting securities. Almost 200,000 of these shares had been received for "services" or other intangibles (R. 853).

Another block of National Company's securities was obtained by Bond and Share through the organization and reorganization of Lehigh Company. The original Lehigh Company was organized in 1917 by a syndicate, of which Bond and Share was syndicate manager, to acquire securities of electric, gas, and traction companies in Pennsylvania (R. 986). Although none of these securities was contributed by Bond and Share, it received 40,000 shares of the common stock of the original Lehigh Company (13 per cent of its outstanding voting securities) as consideration for services rendered in connection with the organization and financing of this company (R. 986). In 1926, Bond and Share formed the new Lehigh Company and exchanged one share of the old company's stock for ten of the new. Bond and Share thus received for the 40,000 shares it had held in the old Lehigh Company 400,000 shares in the new. In 1928, Bond and Share arranged for National Company to exchange its own common stock, share for share, for Lehigh common stock (R. 987). Organizing services to the original Lehigh Company thus ultimately brought Bond and Share 400,000 shares of National Company common. Bond and Share as usual took payment for its wits rather than its capital. Nearly one-third of the common stock of National Company acquired by Bond and Share

prior to 1928 represented no cash investment on the part of Bond and Share.[20]

Since its organization, National Company has acquired controlling interests in utility properties in the six states of Tennessee, Alabama, North Carolina, South Carolina, Virginia, and Pennsylvania (R. 321). Between 1923 and 1930, the formation and acquisition of Arkansas Central Power Company, Memphis Power & Light Company, Birmingham Electric Company, Carolina Power & Light Company, and Tennessee Public Service Company by National Company and its predecessor, under the financial guidance of Bond and Share, were accompanied by write-ups, as found by the Federal Trade Commission, of almost fifty million dollars upon the books of these companies (R. 927). The lack of justification for such write-ups is illustrated by subsequent events. After the ledger value of the Birmingham Company's assets had been increased ten million dollars in 1924 (R. 927), a decrease of over twelve million dollars was authorized by the company in 1934 (R. 930). In the meantime, however, bonds and preferred stock had been sold to the public on the basis of the inflated values (R. 827, 1863, 1877, 1889). Similarly, extensive write-downs of the ledger value of the investments of Memphis Power & Light Company and Carolina Power & Light Company occurred between 1933 and 1935 (R. 930).

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[20] On December 31, 1927, National Company's stock appeared on Bond and Share's books at $1,926,619. Only $670,003 of this sum represented a cash outlay, the balance being accounted for by stock issued for services, other intangibles, and write-ups (R. 853).

The activities of National Company have been directed by Bond and Share since the date of its formation by Bond and Share. The majority of the first permanent board of directors of National Company were officers or directors of Bond and Share (R. 319). Until November 25, 1935 (see pp. 64–66, *infra*), at least a third of the directors of National Company were also officers or directors of Bond and Share (R. 1037). Until that date Bond and Share had supplied the officers and staff of National Company who received their salaries directly from Bond and Share (R. 330). There is no stockholder of National Company comparable in size of holdings to Bond and Share (R. 949). There has never been a contest over proxies, nor any organized opposition to the management (R. 327), which was initially selected and installed by Bond and Share (R. 319). Prior to the formation of new National Company, Bond and Share serviced the companies that were to form that company (R. 398, 984, 986); and subsequent to its formation and until November 25, 1935, Bond and Share serviced National Company and its subsidiaries (R. 330, 398). Since that date Ebasco has serviced these subsidiaries (R. 335).

Since the organization of National Company, Bond and Share has acquired additional amounts of its voting securities (R. 319). Between 1928 and 1934, Bond and Share purchased over one million shares of National Company common stock at an average price of $40 per share (R. 853). During that period the shares sold as low as $6⅝ and are now selling for less than $8 per share (Moody's P. U. 1935, p. 1520). Bond and Share

now owns 46.56 per cent of the voting securities of National Company (R. 319) and votes 62 per cent of the total shares represented at its annual meetings (R. 326).

G. THE DEVELOPMENT OF UNITED COMPANY

In the late 1920's there developed considerable interest in the long distance transportation of natural gas. Electric Company already had some gas properties (R. 314, 978), and it was not unnatural that Bond and Share should use that company as a vehicle for the development of its interest in natural gas. But, inasmuch as Electric Company was already highly capitalized through the issue of many different classes of securities, Bond and Share employed the device of creating, for purposes of financing, a major intermediate holding-company system within the Electric Company system, itself an intermediate system. United Company was therefore created as a subsidiary of Electric Company to acquire natural gas properties in the southwest and to obtain the cash required to develop additional gas reserves and extend existing pipe lines (R. 314). The depression, by making impossible the customary recoupment of Bond and Share's investment by security sales to the public,[21] has obliged Bond and Share to

[21] Mr. Inch, president of Bond and Share, testifying before the House Committee on Interstate and Foreign Commerce, discussed with modest candor the Bond and Share custom of recouping its investment from the public. Following a discussion of the organization of American Company, he stated: "The American Power & Light Co. then did certain public financing to pay for it, of course * * *. It was thought desirable when that group was done

utilize, in the development of United Company, more of its own capital and for a longer period than was Bond and Share's customary practice.

The plan of organization of United Company was not essentially different from that followed in the organization of Electric Company and National Company.

In 1929 Electric Company, through the agency of Bond and Share, organized Louisiana Gas & Fuel Company in order to merge Electric Company's gas properties in Louisiana and Texas with the gas interests of the Palmer Corporation in Louisiana. Electric Company received a major portion of the securities issued by Louisiana Gas & Fuel Company for the properties conveyed to it. Thereupon Bond and Share acquired somewhat less than half of the common stock of the Louisiana Company which had been issued to the Palmer interests in exchange for its own preferred stock, while Electric Company paid cash for the debentures and preferred stock of the Louisiana Company which had been issued to the Palmer interests (R. 978–979). Electric Company also gave one of its own directors 5,000 shares of common stock, 1,000 shares of second preferred stock, and $75,000 debentures of the Louisiana Company for his services in connection with these transactions (R. 979 f. 2937).

In 1930, Bond and Share organized United Company to merge the interests of Louisiana Gas & Fuel Company and United Gas Company (R. 978).

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to close it and go on and do another job [Electric Company] and then to get the new investors that might come into that, you see" (R. 1045).

United Gas Company owned the securities of numerous gas-utility companies operating in Texas and had not theretofore been affiliated with the Bond and Share system (R. 980 f. 2938). At the same time, United Gas Company, which had arranged to purchase certain gas properties for $50,000,000, made a deal with Bond and Share whereby Bond and Share put up the entire cash in the form of a 7 per cent short term loan and received, as a bonus, 300,000 shares of United Gas Company stock (R. 980). Upon the organization of United Company, the securities of United Gas Company and of Louisiana Gas & Fuel Company were exchanged for securities of United Company. Bond and Share received 450,000 shares of United Company common, representing approximately 7 per cent of the voting securities of the United Company, and 150,000 option purchase warrants, in exchange for its 300,000 shares of United Gas Company stock (R. 314, 853, 980). As part of the organization agreement, Electric Company undertook to furnish the cash necessary to liquidate the outstanding indebtedness of United Company to Bond and Share (R. 980 f. 2940). But Bond and Share retained the bonus stock and warrants it had received for making the loan. These securities are carried on the books of Bond and Share at a ledger value in excess of $7,000,000 (R. 853). For the securities Electric Company transferred to United Company, Electric Company received 642,930 shares of $7 second preferred stock (which is given three votes per share), and 3,191,805 shares of common stock, representing together 61.55 per cent of the voting securities of United Company, and

2,695,000 option warrants to purchase common stock (R. 314 f. 942).

Later in 1930, Bond and Share added another corporate link between United Company and its operating properties. It organized United Gas Public Service Company to acquire from United Company substantially all of its assets in exchange for 2,500,000 shares common, 200,000 shares first preferred, 300,000 shares second preferred, and $70,000,000 debentures of United Gas Public Service Company (R. 981). The formation of United Gas Public Service Company was obviously intended to make it possible for United Company to undertake new financing by enabling it to make a public offering of the $70,000,000 United Gas Public Service Company debentures. The $134,824,559 write-up in the ledger value of United Company's assets (R. 925) under more normal conditions might have made that possible, but the intervening depression frustrated any such plan.[22] Bond and Share was forced to finance the situation with its own funds (R. 820 f. 2460) and with the use of such funds as United Company could borrow from the banks by depositing debentures of United Gas Public Service as collateral in an amount equivalent to 200 per cent of the loan (R. 821 f. 2463). The bank loans, due July 20, 1936, had to be met by the sale to Bond and Share of $25,000,000 of these

[22] The ledger value of United Company's assets was decreased, two years after this write-up, by $130,587,487.59 (R. 930). But in the meantime non-voting preferred had been issued to the public based on the inflated values (R. 799, 1893). Dividends on this stock are more than $25 in arrears (R. 821).

debentures (New York Herald Tribune, July 22, 1936).[28]

From its organization, Bond and Share and Electric Company have completely dominated United Company. At present all the directors of United Company are officers or directors of Electric Company (R. 1039). There is no stockholder comparable in size of holdings (R. 1003) to either Electric Company, holding 61 per cent of the voting securities, or Bond and Share, holding 7 per cent of the voting securities (R. 284). There has never been a contest over proxies or any organized opposition to the Bond and Share management (R. 327, 330 f. 990). Since the date of the organization of United Company, Bond and Share and Ebasco, respectively, have performed general services for all of the operating companies in the United Company system, and Bond and Share performed services for United Company, as a holding company, until November 25, 1935 (R. 314–315).

III. The Structure and Extent of the Bond and Share System

We have sketched in broad outline the major steps in the growth of the Bond and Share system.

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[28] It may possibly be suggested that the aid extended to United Company illustrates the manner in which Bond and Share helps its companies in distress. But the distress in this instance may be traced directly to the excessively pyramided financial policies pursued under Bond and Share's guidance. The aid was extended to preserve Bond and Share's and Electric Company's interest and control. No aid has been extended to the holders of the preferred stocks of Electric and United Companies whose dividends are in arrears (R. 818, 821). (See also, p. 100 n., *infra*.)

With a small amount of its own capital, Bond and Share has brought within its dominions numerous operating gas and electric companies all over the United States and in many parts of the world.

In the United States the Bond and Share system embraces utility properties in no fewer than 32 states, from Pennsylvania to Oregon and from Minnesota to Florida (R. 282, 2114, 2160). The system serves 2,487,500 electric customers, 10 per cent of the total electric customers in the United States, deriving therefrom in a year $214,600,000 in revenues (R. 2061). This exceeds the annual income of any state in the United States, with the exception of New York (Financial Statistics of State and Local Governments (1932) p. 10, compiled by the United States Department of Commerce, Bureau of Statistics). In 1934, 85 billion kwh of electric energy were generated in the United States (R. 2061). Of this amount the Bond and Share system generated 11.8 billion kwh (R. 2061), or approximately 14 per cent, and handled 14½ billion kwh (R. 2053), or 17 per cent.[24] The system owns 23,460 miles of transmission lines (i. e., lines of more than 40,000 volts), or 30.2 per cent of the total miles of transmission lines in the United States (R. 2061, 2230–2231, finding 31).

The constituent companies of the Bond and Share system are extensively engaged in the interstate transmission of electric energy. Over 3.7 billion kwh (R. 2053), or approximately 31 per cent

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[24] The figure for the amount "handled" by the Bond and Share system includes, in addition to the energy generated by the system, the energy purchased by the system from companies outside the system (R. 2045).

of the energy generated by the system and approximately 25.8 per cent of all energy handled by the system, is transmitted across state lines (R. 2231–2232, finding 32).[25] Bond and Share companies handle in excess of 25 per cent of the total energy transmitted across state lines in the United States.[26]

The gas business of the Bond and Share system in the United States ranks among the first of the gas holding-company systems of the country. The system engages in the gas business in 15 states of the United States and in Mexico, with producing properties of a million and a half acres of gas leases, and more than 6,000 miles of main gas line (R. 620). Four hundred and fifty thousand customers are served, with yearly production and purchases of gas amounting to more than 213 billion cubic feet (R. 620). The annual operating revenues from gas sales amounted in 1935 to approximately $45,000,000 (R. 308, 313, 318, 324, 2235–2236, finding 42).

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[25] At least half of the energy transmitted by Bond and Share companies across state lines is sold to an associate or non-associate company, and only a minority is sold at retail by the transmitting company in the state of destination (R. 2059).

[26] 14.5 billion kwh of electric energy were transmitted in interstate commerce in the United States in 1929 (R. 483 f. 1448). Companies in the Bond and Share system transmitted 3.7 billion kwh across state lines in 1934 (R. 2053). Inasmuch as energy generated in the United States in the year 1934 was 85 billion kwh (R. 2061) as against 95.5 billion kwh generated in 1929 (R. 483), it is estimated that Bond and Share today handles substantially in excess of 25 per cent of the total energy transmitted across state lines in the United States.

The Bond and Share companies engage extensively in the interstate transportation of gas by pipe line. In 1935, out of an approximate total of 213 billion cubic feet of natural and manufactured gas handled by the system, 91 billion cubic feet, or 47 per cent, were transported across state lines (R. 622, 2236, findings 43 and 44). Of the 91 billion cubic feet transported across state lines, subsidiaries of Electric Company handled approximately 89 billion cubic feet. Thus the Electric Company group was alone responsible for 20 per cent [27] of all the gas transported across state lines in the United States (R. 628–629, 615).

These gigantic gas and electric utility enterprises over which the Bond and Share companies hold sway represent tremendous aggregations of capital belonging to investors throughout the world. Of the huge investment in these enterprises, seventy-five to eighty per cent is represented by the senior securities of operating companies (R. 280 f. 839–840), purchased for the most part by the investing public. The interest of Bond and Share or its intermediate holding companies in these operating companies (as represented by their common stock holdings) usually did not exceed 25 per cent of the total stated capitalizations

[27] In 1934, 414 billion cubic feet of gas moved across state lines in the United States (R. 615). The amount of this interstate movement handled by subsidiaries of Electric Company in that year is not available in the record. In 1935, however, Electric Company subsidiaries transported 89 billion cubic feet across state lines which is more than 20 per cent of the United States total interstate movement for the previous year.

of the operating companies. When these capitalizations reflected, as they nearly always did, ledger values substantially in excess of the cash paid into the operating companies or the original cost of the properties to their predecessor companies (R. 914–915), Bond and Share's real equity in these properties became even smaller, and the public's larger. Write-ups in the capital accounts of the operating companies, in other words, served as the book basis for the securities issued. And the Federal Trade Commission found that the write-ups on the books of Bond and Share's domestic subsidiaries (in excess of ledger values on the books of the predecessor companies or of the cost to the seller) amounted to $458,902,664 (R. 923 ff.). Subsequent write-downs have totalled $196,839,396 (R. 930). It is a fair conclusion, even though possibly not susceptible of exact proof, that in light of the write-up policies pursued by Bond and Share, the common stocks of its operating companies, which its intermediate companies hold, represent substantially less than 20 per cent of their *bona fide* capitalization. The real owners of the operating properties in the Bond and Share system are not Bond and Share (which owns, in its intermediate holding companies, only a minority interest sufficient for control); nor are the real owners the intermediate holding companies which own substantially all of the common stock of the subsidiary companies. The real owners are the senior security holders of the operating companies. It is they who have contributed substantially more than three-fourths of the capital. Yet they have been deprived of any real rep-

resentation in the management of their properties, and for them Bond and Share had no mandate to speak.

Despite the write-ups and inflated structures of some of its intermediate companies, Bond and Share's own capitalization was kept in modest bounds so long as it operated as a substantially wholly owned subsidiary of General Electric (see p. 7 n., *supra*). But beginning in 1927 Bond and Share began to modify and expand its own capitalization by the declaration of stock dividends, by corporate adjustments, and by public financing. Its stock capitalization rose from $50,000,000 in 1926 (R. 735) to $300,000,000 in 1929, and its surplus was carried up to a figure in excess of $670,000,000 (R. 737). Some downward adjustments occurred later after public money had been obtained on the basis of its written-up assets (see p. 24, *supra*), and its stock is capitalized on its books today at a stated value of $171,901,233 (of which nearly 85 per cent, or $145,565,500, is represented by preferred stock), and its surplus is carried at $371,108,201 (R. 759). When the District Court had this case under consideration, the 5,267,147 outstanding shares of common stock, with a par value of $5 (R. 759), had a current market value of approximately $22½ per share, or an aggregate market value of $118,510,807 The 1,155,655 shares of 6 per cent preferred stock (R. 759), then selling at $84, had an aggregate market value of $97,075,020. The 300,000 shares of 5 per cent preferred stock (R. 759), then selling at $73, had an aggregate market value of $21,900,000. The combined

market value of Bond and Share's outstanding securities was, therefore, $237,485,827.[28]

The utility assets in 32 states and in several foreign countries which Bond and Share controls and operates have a value (as carried on the books of the subsidiary companies as of December 31, 1935) totalling three billions of dollars, as may be seen from the following tabulation:

Consolidated statement showing securities outstanding and surplus of five major sub-holding companies and subsidiaries

Holding company	Capital stock	Capital stock of subsidiaries held by public	Funded debt (of holding company and subsidiaries)	Surplus [1]	Total
American Gas (R. 767-9)	$78,543,214	$127,241,393	$190,337,900	$68,329,728	$464,452,235
American Company (R. 788-90)	214,645,637	112,118,837	353,678,200	32,500,654	712,943,328
Electric Company (R. 815-8)	155,044,139	279,080,345	259,207,932	10,619,387	703,951,803
National Company (R. 842)	125,839,095	96,078,690	266,617,500	27,376,938	515,912,223
Subtotal	574,072,085	614,519,265	1,069,841,532	138,826,707	2,397,259,589
Amer. & For. Power (R. 749-50)	343,940,452	57,143,279	204,499,112	22,105,111	677,687,954
Total	968,012,537	671,662,544	1,274,340,644	160,931,818	3,074,947,543

[1] Reserves listed as such on various balance sheets are not included in surplus.

Bond and Share's actual stake in this three billion-dollar empire, as represented by the investment it made in its principal subsidiaries (excluding certain improvident purchases of stock made sometime between 1928 and 1934 on a declining market), is relatively insignificant, as may be seen from the tabulation on the following page:

[28] Bond and Share's net current assets aggregated, at the time the District Court had this case under consideration, approximately $39,000,000 (R. 755, 759).

Investment of Bond and Share in stocks of major holding companies as of December 31, 1927 [1]

Holding company	Cash purchases	Acquisition in exchange for securities—cost to Bond and Share of securities exchanged	Stock received for services or other intangibles at ledger value on books of Bond and Share	Total
American Company:				
Common	$332,536	$1,163,440	$241,240	$1,737,216
Preferred				
Electric Company:				
Common	40,250	50,292	1	90,543
Second preferred	891,120			891,120
First preferred	54,068			54,068
Option warrants				
National Company common	325,682	344,321	260,000	930,003
American Gas common	263,902	6,500	49,620	320,022
United Company				
Total	1,907,558	1,564,553	550,861	4,022,972

[1] All figures are taken from exhibit 28, R. 851–853. Stock dividends which cost Bond and Share nothing are not included. The foregoing table does not include Bond and Share's investments in bonds of its American subsidiaries, and the stipulation contains no statement of the amount thereof as of Dec. 31, 1927. In any case, such investments could not be considered as permanent investments by Bond and Share since, as above noted, it was not its practice to retain such bonds but to dispose of them from time to time to the public.

Thus in 1927 Bond and Share with an investment, as shown by the preceding table, of only $4,022,972 controlled utilities in the United States with aggregate assets exceeding a billion dollars.[29] In that same year Bond and Share collected from

[29] The table on page 46 shows that the aggregate capitalization and surplus of the American companies controlled by Bond and Share exceed 2 billion dollars. The figures for 1927 are not in the stipulation. The only major development in the domestic system, however, since that date has been the acquisition by Electric Company of United Company. It is a conservative estimate, therefore, that the assets of the domestic companies controlled by Bond and Share in 1927 exceeded 1 billion. Cf. Trade Commission Report, Part 72–A, pp. 52, 54.

its domestic subsidiaries $7,646,105 in service fees alone, and a total revenue that year of $9,761,566—more than twice its actual investment (R. 1815).[30]

Even if one dignifies as "investments" Bond and Share's improvident purchases of stock of subsidiary companies made subsequent to 1928, Bond and Share's actual investment in its subsidiary companies remains relatively small, as may be seen from the following tabulation:

Investment of Bond and Share in stocks of major holding companies as of December 31, 1934[1]

Holding company	Cash purchases	Acquisition in exchange for securities—cost to Bond and Share of securities exchanged	Stock received for services or other intangibles at ledger values on books of Bond and Share	Total
American Company:				
Common	$8,358,881	[2] $5,577,672	$241,240	$14,177,793
Preferred		532,000		532,000
Electric Company:				
Common	32,823,230	1,879,480	1	34,702,711
Second preferred	914,180	391,875		1,306,055
First preferred	1			1
Option warrants		[3] 590,000		590,000
National Company common	45,159,950	12,358,986	260,000	57,778,936
American Gas common	19,047,991	[4] 11,550,793	49,620	30,648,404
United Company:				
Common	309,076	5,596,500	7,035,664	12,941,240
Preferred	1,594,914			1,594,914
Total	108,208,223	38,477,306	7,586,525	154,272,054

[1] All figures are taken from exhibit 28, R. 851–853. Stock dividends which cost Bond and Share nothing are not included. As of December 31, 1935, Bond and Share also held approximately $10,000,000 of bonds of American operating companies, together with notes of United Company aggregating $28,925,000 (R. 849). The circumstances which prevented it from liquidating this indebtedness from United Company have been described (see pp. 39–40, *supra*).

[2] Represents valuation recorded on books of Bond and Share. This valuation was $1,388,238 in excess of ledger value on books of Electric Investors, Inc., the selling company (R. 853). At the time of the acquisition, Electric Investors was a subsidiary of Bond and Share (R. 734).

[3] Represents valuation recorded on books of Bond and Share. This valuation was $589,999 in excess of ledger value on books of Electric Investors, Inc., the selling company.

[4] Represents valuation recorded on books of Bond and Share. This valuation was $4,228,668 less than ledger value on books of Electric Investors, Inc., the selling company.

[30] Bond and Share's foreign ventures have entailed a much greater investment than its American enterprises. Under-

Thus Bond and Share's control over a major part of the great utility industry has been built up and maintained with a relatively small amount of its own funds. Bond and Share is a financial enterprise; Bond and Share and its principal intermediate holding defendants are not operating utility companies; their business is the control, management, and the financing, through the sale of securities to the public, of their subsidiary operating companies. The many and lucrative public offerings of securities of the vast number of companies (through numerous realignments and developments) in the Bond and Share system (R. 1854–1896), which Bond and Share and the intermediate holding defendants have arranged and sponsored, would be the envy of many investment bankers. Since its organization Bond and Share has arranged for the public offering of hundreds of millions of dollars of securities of itself and the constituent companies of its system (R. 1854–1896). Bond and Share alone has 130,000 shareholders, who reside in every state of the United States and in many foreign countries (R. 301). The outstanding securities of all of the companies in the Bond and Share system are held by more than 800,000 persons (R. 301).[31] The pyramided

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taken during a period of exuberant confidence, these foreign ventures have cost Bond and Share upwards of $200,000,000. Its cash purchases of American & Foreign Power securities aggregated, as of December 31, 1934, $189,166,952 (R. 855), which is much larger than its aggregate cash investment in its American systems (R. 855).

[31] In the year 1935 alone, over 14 million shares of stock of Bond and Share and the holding defendants and their subsidiaries were bought and sold in the United States on

Bond and Share empire was built up and maintained with other people's money, and that money was obtained by the marketing of securities through the mails and the channels of interstate commerce (R. 147, 1854–1896).[82]

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national securities exchanges (R. 884–903). And the senior securities of the system so traded had an aggregate par value of over 200 million dollars (R. 884–903).

[82] Compare the Report of the National Power Policy Committee, many of whose recommendations are incorporated in the Act. In its report, the Committee states (Document No. 137, 74th Congress, 1st Session, pp. 4–5): "By the pyramiding of holdings through numerous intermediate holding companies and by the issue, at each level of the structure, of different classes of stock with unequal voting rights, it has frequently been possible for relatively small but powerful groups with a disproportionately small investment of their own to control and to manage solely in their own interest tremendous capital investments of other people's money. And the ownership of the stock of operating companies is but one of many devices by which a few clever men have woven the amazing network of control and influence with which they have enveloped and entangled large sectors of the gas and electric utility industry. Voting trusts, interlocking directors and officers, management contracts, the control of proxies, and other means, all have been facilely used to bring about a concentration of control in fewer and fewer hands.

"The growth of the holding-company systems has frequently been primarily dictated by promoters' dreams of far-flung power and bankers' schemes for security profits, and has often been attained with the great waste and disregard of public benefit which might be expected from such motives. Whole strings of companies with no particular relation to, and often essentially unconnected with, units in an existing system have been absorbed from time to time. The prices paid for additional units not only have been based upon inflated values but frequently have been run up out of reason by the rivalry of contending systems. Because

Bond and Share, as we have seen, originally acquired dominion over these properties with little real investment of its own; and a goodly portion of

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this growth has been actuated primarily by a desire for size and the power inherent in size, the controlling groups have in many instances done no more than pay lip service to the principle of building up a system as an integrated and economic whole, which might bring actual benefits to its component parts from related operations and unified management. Instead, they have too frequently given us massive, overcapitalized organizations of ever increasing complexity and steadily diminishing coordination and efficiency."

Compare also the additional views of Mr. Eicher in the Report of the House Committee on Interstate and Foreign Commerce on the Act, 74th Congress, 1st Session, House of Representatives, Report No. 1318, pp. 46–48: "A specious argument was put forth that the holding company was necessary to provide diversification of risk for the investor. That was obviously an attempt to invent an after-the-fact justification for the giant holding companies, which were not promoted to provide diversification of risk for the investor but to aid in the sale of equipment, to facilitate stock-jobbing, mergers, and other lucrative forms of financial opportunism, and to build up great economic empires. As a matter of fact, the best securities in a holding company system are not 'diversified'; they are the senior securities of the subsidiary operating companies which constitute liens on specific physical assets and which offer no 'diversity of risk' to the investor. The only 'diversified' securities in a holding company system are the holding company's own securities which, no matter what they are called, have nothing back of them but the slender stock equities in operating companies; and these are 'diversified' not with an eye to protection for the investor, but to give power, completely disproportionate to their real investment, to the promoters and bankers of a far-flung utility empire.

"The thin controlling equities of the holding company, neither in theory nor in practice, offer a sound diversification of risk from the investor's standpoint. The securities

the funds it later devoted to increasing its interest in these properties did not go to build up their capital plant, but was frittered away in wanton

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of those holding companies, like Associated Gas & Electric, Electric Bond & Share, Cities Service, Insull, Standard Gas & Electric, which have offered the most 'diversification', have by the cold test of market quotations proved to be the poorest risks for the investor. This has been no accident. A company whose activities and ventures are so wide-spread that they cannot be followed in intimate detail by a localized management, is bound to be speculative. Supermanagement is too often nothing but superfinance; and superfinance has always been costly to the investor. As the President wisely observed in his message, 'investment judgment requires the judicial appraisal of other people's management.' * * *

"Do the holding companies own the local operating companies? They do not. They simply control the operating companies. As a general rule all that a holding company owns is the common stocks of operating companies, and the common stock which a holding company owns in an operating company seldom represents more than one-fourth of the capital that has been put into that operating company. Sometimes the common stock of the operating company which the holding company owns represents no real investment at all—all the real money that goes into the operating company is obtained through the sale to the public of preferred stocks and bonds of the operating company, and the common stock is water, issued without consideration as promoter's profit.

"Who then really owns the operating companies? The answer is that three-fourths or more of the operating companies' securities are represented by preferred stocks and bonds which are held directly by the general public. It is those securities of the operating companies, not the securities of the holding companies, which are held by the life insurance companies, the savings banks and other fiduciaries. These organizations put their funds directly into the securities of operating companies. The securities of the

speculation.[33] It was not the purpose of Bond and Share to tie up any more of its own capital than was necessary to maintain its control and influence (R. 280, 964 f. 2891). As Bond and Share accumulated a controlling interest in a group of companies, it would turn that interest over to an intermediate holding company which would issue against the slender equities in the operating companies not merely common stock, but different classes of preferred stock with unequal voting rights, unsecured bonds, and highly speculative option purchase warrants. Bond and Share did not retain all the common stocks of these intermediate companies, but just enough to give it a dominating and controlling position (R. 284). Bond and Share employed at times the stock dividend device (R. 735, 851, 912 f. 2736) which gave the investor a semblance of a return, while Bond and Share maintained its control over the profits.

The great bulk of its investors were given no voice in the management of these estates. Their

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holding companies are normally not even legal investments for such trust funds."

[33] The extensive buying of the common stocks of the intermediate companies sometime between 1928 and 1934 (R. 851, 853) was obviously for the most part ill-advised speculation; it was not a particularly prudent use of Bond and Share's funds; it did not help the investors in Bond and Share; nor did it, except in the case of United Company (which was in difficulty because of original imprudent Bond and Share promotion at inflated values), help strengthen the intermediate companies or their subsidiaries. (See pp. 15, 22, 31, 35, *supra*.) These improvident purchases were made after Bond and Share had begun to manipulate its own capitalization, as well as that of its subsidiary companies, and to sell its own securities to the public.

holdings rapidly depreciated in value when hard times came and the oppressed consumers temporarily cut down on the use of electricity and gas. Service fees, representing a great part of the income of Bond and Share, were based on revenues of the serviced companies and entered into the rates paid by consumers (R. 414).[34] When millions of consumers in hard times pay a few cents less per month, the tribute available for those at the top of the pyramid is sharply reduced. Conversely, when revenues rise, riches rapidly accumulate at the top of the pyramid. From the consumer, pyramided finance has taken its tribute; to the investor, pyramided finance has given not a diversification but an accentuation of risk, illusory profits, and irreparable loss.

IV. The Operations of the Bond and Share System

We have sketched the development of the Bond and Share system from its origin as a mere adjunct of General Electric into a mighty corporate barony and have surveyed the structure and extent of that system. We turn now to examine how the system and its constituent companies operate.

This examination will be particularly directed to the matter of the control possessed by Bond and Share and the twelve other defendants over the operations of their subsidiaries, and to the activities of the defendants and their subsidiaries in interstate commerce.

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[34] For the aggregate amount of service fees collected, see p. 98, *infra*.

A. DEFENDANTS' CONTROL OVER THEIR SUBSIDIARIES

A holding company is distinguished from an investment company by the control it is in a position to exercise over its subsidiaries.[35] In the com-

[35] Before the Congress, the holding companies contended that "control" over their subsidiary enterprises was an essential ingredient of their operations. In a booklet distributed to members of the Congress by Bond and Share in the spring of 1935, when the Act was under consideration, it was stated: "A unified plan of management is the essential factor in efficiency and accomplishment. It is the central idea on which Electric Bond and Share Company is operated. Separate management from control and from responsibility for raising funds and there is bound to result wasteful and inefficient management" (R. 1047 f. 3141).

Similarly, Mr. H. Hobart Porter, president of American Water Works and Electric Company, in a communication to the Chairman of the House Committee on Interstate and Foreign Commerce under date of March 30, 1935, printed in the Hearings before that Committee, 74th Congress, 1st Session, on H. R. 5423 (the Holding Company bill), Part 2, pp. 1436–1440, stated: "Investment trusts are based upon the principle of diversification of risk, and they carry that diversification far beyond any possibilities open to the holding companies. * * * If they lose confidence in the management of a company in which they are interested, they have a ready market for such of its securities as they may own, and they can sell them with only such loss as open market conditions may require.

"But from the very nature of the case a utility holding company cannot thus protect itself, and it must therefore have the power to insure efficient management of the operating companies in its system. In order to perform its necessary function of providing the junior capital for the operating companies, it must buy and hold their common stocks, which in the main are not and cannot be listed, and therefore cannot be sold on the open market. To get the

plicated field of corporate finance, that control may be exercised in many ways, sometimes loosely and sometimes rigidly, sometimes openly and sometimes covertly. Where voting stock is widely distributed, actual control may be exercised by a very small percentage of common stock; yet a large minority interest may be unable to exercise control if a still larger interest is possessed by another organized group. It is relatively easy for a company charged with controlling another company to prove that it in fact exercises no control, but it is extremely difficult for an outside agency, which must draw its facts from unwilling witnesses, to assume the burden of proving actual control. The use of voting trusts and of agents and nominees with undisclosed principals may conceal the real source of control. The Act, therefore, makes a specified percentage of voting stock ownership presumptive evidence of control and of the existence of a holding-company relationship. But the puta-

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money to buy those common stocks it must sell its own securities. It cannot sell its own securities unless it can assure those who purchase them that it is so organized and conducted that it can at all times provide sound and efficient management for the operating companies whose junior securities it owns and must continue to own. It cannot insure such management without maintaining the voting control of its subsidiaries so that it can determine their policies and remove executives who may prove to be inefficient. In the utility business, just as in all other business, control must be vested in the owners who provide the junior capital. They take the principal risk and they will not take that risk unless they have the power to *control* the conduct of the business which they own and thus protect themselves as far as possible against loss."

tive holding company may come before the Commission and prove that it does not possess control or a controlling influence over another holding or utility company and that it is not therefore a holding company within the meaning of the Act (section 2 (a) (7)). Bond and Share and the nonexempt holding and holding-operating defendants have agreed in the stipulation and have averred in their pleadings, and the District Court has expressly found, that they are holding companies within the meaning of the Act and that they are not entitled to any exemption under section 2 (a) (7) on the ground that they do not control or exercise a controlling influence over their subsidiaries (R. 268–269, 155–156, 2226–2228, finding 25). Likewise, the holding and holding-operating defendants have agreed in the stipulation and have averred in their pleadings, and the District Court has expressly found, that they are not entitled to any exemption under section 2 (a) (8) as subsidiary companies of Bond and Share or of any intervening holding company between them and Bond and Share on any ground that Bond and Share or such intervening holding company does not control or exercise a controlling influence over them (R. 268–269, 155–156, 2226–2228, finding 25).

Thus it was not necessary for the purpose of the present proceeding for the Government to prove affirmatively that the defendants actually control their subsidiaries. The Government deals here with the matter of control only to the extent that it is descriptive of the operations of the Bond and Share system.

Shortly prior to the enactment of the Act, the president of Bond and Share explained the Bond and Share system to the Congress in the following terms (R. 1043–1044):

> It [Bond and Share] is and always has been a working organization. It has from the beginning provided the initiative, done the planning, and found the money for the creation, development, and support of the group which bears its name.
>
> The growth of our group has been not fortuitous but organic. * * * First came Electric Bond & Share Co., itself, in 1905. Its first undertaking was the assembling of the properties for and the formation and financing of the American Gas & Electric Co. * * *.
>
> Later, and from time to time as new operating properties were assembled by Electric Bond & Share Co. initiative and money, a holding company was organized to hold their common stocks, thus making possible the sale of the bonds and preferred stocks of the operating subsidiaries on attractive terms to them * * *.
>
> The Electric Bond and Share Co. plan has been developed on the idea that its associated holding companies [apart from American Gas] are merely investment companies through which equity money could be raised for the financing of the operating subsidiaries.
>
> These associated holding companies have no payrolls, receive no fees, hold no outside investments, and serve no functions except the very important ones of providing the equity money for, and the cash advances needed from time to time by, their own operating subsidiaries.

A booklet distributed by Bond and Share to the members of the Congress in the spring of 1935 frankly stated that "although Electric Bond and Share Company owns a majority of the common stock in only one of these three companies (i. e., Electric Power & Light Corporation), it may properly be said to exercise at this time practical control of each during the pleasure of the holders of a majority of the voting stock" (R. 1046). And further, that "a unified plan of management is the essential factor in efficiency and accomplishment. It is the central idea on which Electric Bond and Share Company is operated" (R. 1047).[36]

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[36] An even more realistic statement of the relationship between Bond and Share and certain of its holding and operating companies had been earlier made to the Committee on Interstate and Foreign Commerce of the House of Representatives by a representative of Bond and Share on its behalf. It was suggested by Bond and Share that the statement be included in the Committee's Report describing the Bond and Share system and was so included. The statement reads (R. 1041–1042):

"The relations of Electric Bond and Share Co. to these holding companies (American Power & Light Co., Electric Power & Light Corporation, and National Power & Light Co.), in addition to the substantial minority voting power position held are such that the Electric Bond and Share Co. organization in reality operates and controls these companies. As these holding companies were originally organized in each instance under the auspices of Electric Bond & Share Co., this relationship has obtained from the beginning of business of each company to the present time. * * * In all three instances, Electric Bond & Share Co. by virtue of being the largest stockholder and being in charge of the operation of the business of the companies has been and is able to obtain sufficient votes from outside stockholders to perpetuate a continuation of the existing relationship."

1. CONTROL AS EXERCISED THROUGH OWNERSHIP OF VOTING SECURITIES

(*a*) *Bond and Share.*—Bond and Share and the holding and holding-operating defendants have at all times had a substantial ownership of the voting securities of their subsidiary companies. The record shows that Bond and Share organized each of the principal holding defendants (see pp. 14, 21, 29–30, 35, 40, *supra*), and now owns 44.6 per cent of the voting securities of American & Foreign Power; 17.51 per cent of American Gas; 20.7 per cent of American Company; 46.56 per cent of National Company; 47.2 per cent of Electric Company; and 7.18 per cent of United Company, 61.58 per cent of the voting securities of United Company being owned by Electric Company (R. 284, 293, 2085). Because of the fact that many stockholders fail to exercise their voting rights either in person or by proxy, the votes cast by Bond and Share at stockholders' meetings represent considerably larger percentages of the total votes cast. Thus, during the past five years, Bond and Share has voted the following approximate percentages of the total number of shares represented at stockholders' meetings: American Gas, 25 per cent (R. 434); American Company, 39 per cent; National Company, 62 per cent; Electric Company, 77 per cent; United Company, 8 per cent; and Electric Company has voted approximately 81 per cent of the shares represented at the meetings of United Company (R. 326–327).

Throughout the history of these companies there has been no contest over proxies and no instance in which hostile interests have appeared in opposition

to the programs or policies of the respective management or to the election of directors voted for by proxies of such management (R. 327, 434). Until a few days before this proceeding was instituted, Bond and Share supplied and paid all the officers and employees of these companies, except American Gas, and was directly represented by two or more of its officers or directors on their boards of directors (R. 327–328, 434–435, 1035–1039). Such direct representation still continues in the case of American Gas (R. 434), with the operating subsidiaries of which Bond and Share does not have the advantage of the same continuous contact as it has with the operating companies of the other holding defendants by reason of its service contracts with these operating subsidiaries. Bond and Share has always so identified its interest with that of the management in each instance as to cause Bond and Share's votes to be cast by proxies nominated by the management (R. 990–995, 1903). Apart from the proxies given to the management, no substantial outside interest of a size sufficient to have any appreciable influence has voted at the stockholders' meetings of any of the holding defendants (R. 990–995, 1903); nor does it appear that there exist any outside interests of a size approaching comparison with Bond and Share (R. 997–1003).[37] Bond and Share has never suggested,

[37] The stipulation does not show the size of any interest in American Gas other than that of Bond and Share. It does show, however, that Bond and Share had 846,985 votes, while for the last six years the shares represented by proxies (other than the management's proxies) or voted in person never amounted to more than 147,000 shares and were

for example, that its control over or relationship to American Company, in which it owns but 20.7 per cent of the voting securities, is any different from its control over or relationship to Electric Company, in which it owns very close to 50 per cent and has in the past owned a majority voting interest.

The wide diffusion of the stock not held by Bond and Share interests among numerous small and widely scattered shareholders serves as a complete guaranty in each instance of Bond and Share's working control. And the large reserve of authorized, but unissued, voting stock of the major intermediate holding defendants (R. 766, 784, 811, 820, 839), together with the charter provisions denying preemptive rights to stockholders and allowing the respective boards to issue the stock to whomever they please (R. 864–865, 881), completely safeguards Bond and Share's control position against surprise attack.

As has been shown, there is and always has been an interlocking of the directorate of American Gas and that of Bond and Share.[35]

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usually less than 100,000 shares (R. 1903). The conclusion that there is in fact no outside interest of a size approaching Bond and Share is confirmed by the Trade Commission Report, Part 22, p. 740.

[35] The present chairman of the board of Bond and Share is the chairman of the board of American Gas (R. 434, 466), and one of the vice-presidents of Bond and Share is a director of American Gas (R. 434). Through the recent past the chairman of American Gas has been either the chairman of the board of Bond and Share, or the president or vice-president or another director of Bond and Share (R. 466). Mr. Sidney Z. Mitchell, who was chair-

Furthermore, from the date of their organization until a day or two before the filing of the Commission's bill in this proceeding, Bond and Share has always had substantial representation on the board of each of the other holding defendants (R. 327, 337, 1004 ff., exhibit 43). Until November 25, 1935, these holding defendants, other than American Gas, had no officers, staffs, payrolls, or offices of their own (R. 330–331). Bond and Share arranged that its own officers and employees should act without salary as the officers of the holding defendants, although continuing to perform their functions and to receive their pay as officers and employees of Bond and Share (R. 330). It was the common practice for the same officer of Bond and Share to act as an officer for more than one of the holding defendants (R. 333). Bond and Share for a service fee did all of the work—executive, managerial, and financial—of the holding defendants (R. 330, 1189 ff.). Bond and Share provided the sponsors through which the holding defendants kept in contact with the local management of their operating subsidiaries (R. 1191). In a word, Bond and Share pro-

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man of the board of Bond and Share for many years prior to his resignation in 1933, was not only chairman of the board of American Gas but was financial adviser to American Gas and took a leading part in outlining financial programs for American Gas and its subsidiaries (R. 466). The present president of American Gas is also a director of the American Company and has in the past been a director of both National Company and Lehigh Company (R. 434), although his personal holdings in these three companies are not substantial (see p. 15 n., *supra*).

vided the eyes through which the holding defendants saw, the ears with which they heard, the brain with which they planned, and the arms with which they acted.

Tout change, rien change. A few days before the Commission's bill was filed against the defendants, all directors of the holding defendants (other than American Gas) who were also directors, officers, or employees of Bond and Share or any of the other holding defendants either resigned their positions with Bond and Share or resigned as director of all but one of the holding defendants (R. 327–328, 333).

This readjustment in the affairs of the holding defendants was not a readjustment effected by other interests upon the withdrawal of Bond and Share, but was a readjustment clearly arranged and directed by Bond and Share. The simultaneous elimination of interlocking directorates among the holding defendants (R. 327–328, 333), between them and the operating companies (R. 337), and among the operating companies as well (R. 341), together with the incorporation of Ebasco as the service organization of Bond and Share, make it perfectly clear that the reorganization was a single plan conceived and executed by Bond and Share. To be sure, the changes in the directorates of the holding companies were all formally effected by the members of their boards who had not resigned. But no stockholders' meetings were called (R. 353), nor is there any evidence that any stockholder of the holding defendants, other than Bond and Share and its directors and officers, was consulted regarding the changes.

Bond and Share did not simply ask its own directors and officers to withdraw from the boards of the holding companies, for some of the directors of the holding defendants who were directors or officers of Bond and Share resigned their positions with Bond and Share and not their positions with the holding defendants (R. 327–328). Bond and Share was most active in the selection of those who were to become the new directors of the holding defendants. Some of the newly elected directors were personally requested to serve by the chairman of the board of Bond and Share (R. 328); and no newly elected director was requested to serve until after conferences between the chairman of the board of Bond and Share and the directors of the holding defendants who had not resigned (R. 328). All of the old directors who did not resign had long owed their positions to Bond and Share, and some of them immediately prior thereto had been directors, officers, or employees of Bond and Share (R. 327–328). Some of the new directors chosen for the holding defendants had immediately prior thereto been officers and directors of Bond and Share (R. 328). The change consisted merely of Bond and Share men taking the place of Bond and Share men.

These changes made on or about November 25, 1935, were obviously arranged by Bond and Share to eliminate any formal interlocking of directors between itself and the holding defendants, other than between itself and American Gas.[39] But the

[39] Since American Gas had for years had its own service organization, Bond and Share was not in a position, without duplicating or disrupting the work of American Gas, to

new boards no less than the old boards were nominated and approved by Bond and Share and were men trained by Bond and Share or men in whom Bond and Share had complete confidence to follow Bond and Share direction. The embarrassment of formal interlocking directors was removed; the advantage of the interlocking relationship was preserved. The harmonious plan of action put into effect on approximately the same date and in substantially the same manner by each of the holding defendants is a striking illustration of what the Bond and Share management considered to be "the central idea on which Bond and Share is operated," that is, that "a unified plan of management is the essential factor in efficiency and accomplishment" (R. 1047).

As part of the same "unified plan," on or about the same date Bond and Share canceled the service contracts previously existing between Bond and Share and the above-mentioned holding defendants (R. 353). The cancellation of these service contracts was authorized by the respective boards of directors of Bond and Share and the holding defendants to become effective at once, but without previous notification to, or action by, the stock-

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keep in direct and constant touch with American Gas subsidiaries as it could with its other subsidiaries by reason of its own service arrangement with them. For that reason it was apparently regarded as of value to have the chairman of the board of Bond and Share continue as chairman of the board of American Gas and one of the vice-presidents of Bond and Share as a director of American Gas so as to enable its chairman personally to preside over both organizations and to avoid any cleavage between the two companies by reason of their separate service organizations.

holders (R. 353). Bond and Share built up the personnel of officers and employees of the holding defendants virtually overnight by choosing substantially all of them from among those who had the day before been officers or employees of Bond and Share (R. 331). Each holding defendant's staff now consists approximately of one president, one vice-president, one secretary-treasurer, one assistant secretary-treasurer, 7 accountants, bookkeepers, or clerks, 5 secretaries, stenographers, or typists, and one office-boy (R. 331, 1040). How such a staff of seventeen people composed in the main of junior clerks are or will be able to exercise any independent judgment concerning the management of investments aggregating hundreds of millions of dollars in the case of each company is not disclosed. Such a staff is obviously insufficient to keep in touch with the affairs of the numerous operating subsidiaries or to analyze and appraise the reports made by such companies to Bond and Share's service organization (R. 405 ff.), assuming such reports are available to it (Cf. R. 1191 f. 3573). The holding defendants must accept and act upon the judgment of the service organization of Bond and Share in the administration of their investments in their subsidiary companies. Certainly Bond and Share, as the principal stockholder of each holding defendant, would not have entrusted the control of hundreds of millions of dollars of securities to a skeleton management on any other basis.

(*b*) *Holding Defendants.*—Having shown how its stock ownership gives Bond and Share effective working control over the holding defendants, including American Gas, we turn to the question

of the effective working control which the holding defendants exercise by reason of their stock ownership over their operating subsidiaries. Not only have the holding defendants admitted that they are not entitled to exemption from the Act as holding companies on the ground that they do not control their subsidiaries (R. 155–156), but they have averred that American Company, Electric Company, National Company, United Company, Power Company, and Lehigh Company "exercise voting control through stock ownership of their subsidiary operating companies" (R. 153 f. 457), and that American Gas in addition to owning stocks of its principal subsidiary companies exercises "voting control of said companies" (R. 153 f. 459). This voting control is assured to the holding defendants through the ownership of substantially 100 per cent of the voting stock of each of their subsidiaries (R. 286–299, 335).[40] Furthermore, as between Electric Company and its intermediate holding-company subsidiaries, United Company and Power Company, and as between National Company and its intermediate holding-company subsidiary, Lehigh Company, there is and has been a substantial community of personnel, including directors, officers, and employees (R. 332).

The directors and officers of American Gas act as directors and officers of American Gas sub-

[40] In a statement dated March 19, 1935, and filed with the Senate Committee on Interstate Commerce, Mr. Tidd, president of American Gas, admitted that American Gas was in full control of its subsidiary companies. Hearings before the Committee on Interstate Commerce, United States Senate, 74th Congress, 1st Session, on S. 1725, p. 828.

sidiary companies and perform the principal executive and managerial functions for such companies (R. 436, 437). With the exception of the general manager and certain minor officers, all of the officers of the subsidiary companies are officers and senior employees of American Gas (R. 437). The centralized technical organization of American Gas has supervised the operations of all its subsidiaries (R. 436). The operating companies have so small a measure of autonomy that local purchasing agents may make only such purchases as are authorized by American Gas (R. 453), and construction work is not sanctioned by a local board until recommended by the board of American Gas (R. 457).

Up to a day or so before the filing of the Commission's bill in these proceedings, it was also the practice for directors and officers of the other holding defendants to act as officers and directors of a number of the operating subsidiaries and to serve on the executive committees of such companies (R. 337, exhibit 43, R. 1004ff.). Up to that time many of these directors and all of these officers were directors, officers, or employees of Bond and Share and many were directors of more than one holding defendant (R. 330, 342, 1013–1017).[41] At the same time that steps were taken to eliminate any formal interlocking directorship between Bond and Share and the holding defendants (other than American Gas), each such holding defendant,

[41] Admittedly, up to that time, the financial programs of the operating subsidiaries were always submitted to the boards of directors of the holding defendants for their approval and no important capital commitments were made by such companies without such approval (R. 336–337).

except American Gas, moved to eliminate any formal interlocking of directorates between it and its operating subsidiaries (R. 337). It would have been impossible for such changes to originate spontaneously from scores of different holding and operating companies. The changes were patently directed from a common source as part of a common plan. But whatever the source of the plan, there can be no question that the power to make these changes resided in, and was exercised by, those who controlled and directed the holding defendants which owned substantially all of the voting securities of the operating companies. The directors of the operating companies had no substantial stock interest in their companies (R. 1051). The holding defendants, or those who controlled them, were the only persons interested in the changes effected, and there can be no doubt that they directed the changes and the substitutions to be made.

(*c*) *Holding-Operating Defendants.*—Likewise there is no question that the five non-exempt holding-operating defendants have effective working control of their subsidiary operating companies by virtue of their ownership of substantially all of the common stocks of such companies (Nebraska Power Company (R. 344); Pacific Power & Light Company (R. 344–345); Utah Power & Light Company (R. 346–348); United Gas Public Service Company (R. 348–349); Houston Gulf Gas Company (R. 349–350)). They have admitted that they have not applied for and are not entitled to exemption from the Act as holding companies on

the ground that they do not control or exercise a controlling influence over their subsidiary companies (R. 155–156). When the holding-operating defendants contract with the service organization of Bond and Share to take its services, they contract to pay for the services rendered their subsidiaries (R. 1170). In a number of instances their directors and officers are interlocked; in fact, the separate corporations of some of the subsidiaries of these non-exempt holding-operating defendants are maintained solely because of the exigencies of state or federal law or the rights of existing security holders (R. 344–350).

2. CONTROL AS EVIDENCED BY SERVICE ARRANGEMENTS

A holding company may exercise the control which its voting-stock ownership in another company gives to it in divers ways and by divers methods. If control exists, its frank avowal as an essential ingredient of holding-company management is preferable to its subtle concealment. The existence of control may be of much greater significance than the particular form of its exercise.

Service arrangements are frequently the result of the control which a holding company exercises over its subsidiaries. They are also one of the many means which may be employed in exercising the control which the holding company's voting-stock gives it over its subsidiaries. Although a holding company may readily exercise control over its subsidiaries without service arrangements, such arrangements are not only strong evidence of the existence of control but supply a means by which

the holding company may watch over and direct the affairs of its subsidiaries.[42]

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[42] Such arrangements may be utilized by the holding company for its own profit. As Congressman Rayburn stated when he introduced the Holding Company bill in the House: "Few holding companies have been satisfied with the dividends that come to prudent investors in economically and efficiently conducted business enterprise. Too often they have sought through all sorts of ingenious devices to get profits fixed by themselves from companies dominated by themselves. Through intermediate construction and supply companies they have monopolized a large part of the business of their subsidiary and subservient companies. By so doing they have substantially restricted the field available to competitive enterprise for supplying the needs of the utility industry and have rendered largely impossible any fair comparison of competitive costs. The industry has consequently suffered and the community has suffered even more. Holding-company officials have complained of Tennessee Valley Authority as a yardstick, but they have so managed the utility industry as to make impossible the measurement of their own performance by any private yardstick" (Hearings before the Committee on Interstate Commerce, United States Senate, 74th Congress, 1st Session, on S. 1725, p. 68).

Such arrangements have also been utilized by holding companies to nullify the effectiveness of state regulation. As Mr. Holmes Baldridge, former General Counsel of the Corporation Commission of Oklahoma, has written in a recent article (The Effect upon State Powers of Expanded Federal Control in the Public Utility Field (1936) 1 Mo. L. Rev. 245, 258–259): "Inability of state commissions to cope with holding company abuses has long been a bar to successful utility regulation. Under the legal fiction that they were not 'doing business' in the state in which they owned local operating companies, holding companies have evaded state regulation and have withheld valuable information necessary to a determination of reasonable utility rates of operating companies: Such expenses as the cost of

When a service arrangement is negotiated at arm's length between two independent companies, each capable of looking after its own interests, there may be little reason to suspect that the one company has by such arrangement subjected itself to the control of the other. If the service or advice is unsatisfactory, the company receiving it is free to reject it and act upon its own judgment. If the service proves unsatisfactory or too costly, the company is free to discontinue it. But when a holding company by reason of its control over its subsidiary can direct its subsidiary to enter into a service contract with it and upon terms suggested by it, there is no semblance of arm's-length bargaining. The advice given by the holding com-

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rendering managerial, engineering, legal, and financial services; the cost of materials, supplies, and construction have harrassed state commissions in their attempts to determine honest utility values. Judicial decisions requiring a showing of the reasonableness of charges for services rendered by holding companies to operating companies have not proved very helpful because few holding companies keep accurate records which are available for state commission inspection. Management fees based upon an arbitrary percentage of gross revenues have been a favorite device of holding companies for siphoning profits from local operating companies. The purchase by holding companies of construction materials in large quantities at substantial cash discounts, and resale of the same to operating companies at list or catalogue prices has had the effect of unreasonably inflating the value of local operating company properties. Indiscriminate borrowing by holding companies from local operating companies without responsibility for repayment either of principal or interest is another common abuse beyond the control of the ordinary state commission.

The Act of 1935 [the Holding Company Act] attempts to cure most of these abuses. * * *."

pany to its subsidiary under a service contract cannot as a practical matter be ignored. The suggestion of the holding company becomes, in the eyes of a subservient board of directors, a command. The suggestion of the holding company may be sound, its advice may possibly be given at a more reasonable cost than it could be procured elsewhere, but the subsidiary company is not in a position to exercise its independent judgment on those and similar questions. It has no choice but to accept the benefits or bear the burdens of the holding company's benevolent or malevolent paternalism.

There can be little question that the service arrangements within the Bond and Share and American Gas systems, be they good or evil, are an incident to the stock ownership and control by Bond and Share and American Gas of their subsidiary companies. The services are confined to closed systems tied together by stock ownership and control—received by and rendered to only companies within such systems. Bond and Share (or Ebasco, its wholly owned subsidiary) has rendered financial services to all operating subsidiary companies in the Bond and Share system, and management services to all such companies other than those serviced by American Gas (R. 397–400, 415, 461–467). Prior to the filing of this suit Bond and Share also had contracts to manage the affairs of American, National, and Electric Companies (R. 397–398). And neither Ebasco nor Bond and Share has for many years rendered such services to any holding or utility company not within the Bond and Share system (R. 400). Nor has any company within the system solicited bids from any company outside the system for the rendition of such services (R. 400).

Similarly, American Gas has rendered management services to its own subsidiaries and no others (R. 443, 459–460). There is no competitive bidding for the construction work which is awarded to Phoenix, a wholly owned subsidiary of Bond and Share, by Bond and Share operating companies (R. 386 f. 1158).

(*a*) *American Gas.*—From the date of its organization, American Gas has maintained a centralized technical organization (R. 436) to handle virtually every type of managerial and technical problem of the subsidiary operating companies (R. 444), apart from financing which has been handled through Bond and Share itself (R. 435, 462–463). When the American Gas service organization was first developed, Bond and Share had only a skeleton technical organization of a few men whose attention was being directed primarily to the work of correlating the financial, engineering, and operating set-up of the operating properties which Bond and Share was in the process of acquiring and reorganizing (R. 394–395). It was natural, therefore, that American Gas should have developed its own organization to rehabilitate the distressed properties which it had taken in receivership. American Gas has served its operating companies without formal agreement (R. 443), and there has consequently been little or no attempt to "rationalize" the legal theory of the relationship of the central organization to its operating units. The operating units have admittedly had substantially the same management as the central organization (R. 436–437).

The central organization, now consisting of 260 persons (R. 444), directs the principal activities of

the operating units and attempts no fine-spun distinction between its advice and its command. Admittedly "American Gas plans and coordinates the development of the properties of each of the operating companies" (R. 445 f. 1333). The administrative department of the central office consists of the executives of American Gas, who are the principal executive officers and directors of the operating units, and they and their assistants perform "for American Gas and every operating company, all functions and duties required of such corporate officers" (R. 445), and receive monthly, weekly, and even daily reports from the local operating units (R. 1955–1956). The legal department "serves as a central law office for the operating companies" (R. 445), conferring with the outside New York counsel of American Gas, who are also counsel for Bond and Share (R. 445). The accounting and auditing departments prepare uniform forms of accounts and reports which are used by all the operating units and make a detailed verification and audit of the accounts of the operating units, examining every bill, voucher, pay roll, petty cash disbursement, etc. (R. 447–448). These departments do all the work in connection with the annual meetings of all the companies, including preparation of notices, proxies, agenda, minutes, etc. (R. 448). The stock and dividend department keeps the stock records and makes dividend disbursements for all companies (R. 449). The statistical department, acting for all companies, prepares and distributes the monthly and annual reports and other information for stockholders and others, supervises reports for all regulatory and tax commissions, prepares answers to question-

naires, and prepares financial and statistical information, including consolidated income statements, balance sheets, and all subsidiary schedules (R. 450). The purchasing department negotiates volume purchase contracts with manufacturers and jobbers which permit the operating units to purchase equipment and supplies and obtain specified discounts (R. 450–451). Except in the case of emergency needs or in case of items which the local agent is authorized by the New York office to purchase locally, all purchases are made by the New York office (R. 453). The commercial department promotes the sale of appliances and of electric energy for all the local operating companies, designs their rate schedules, handles their important rate complaints, assists them in rate matters before state commissions, and negotiates for them large consumers' contracts (R. 454–456). The appraisal and insurance department places all insurance taken out by the operating companies (R. 456–457). The engineering department actively participates in and supervises the engineering work of the operating companies (R. 457). It provides a complete range of engineering service for the operation, maintenance, development, and extension of the operating units and their interconnections (R. 458–459). It handles all major engineering work in connection with construction (R. 457). Such work is not authorized by the board of directors of an operating company until recommended by the board of American Gas (R. 457).

For these services American Gas assesses a charge against the operating companies computed in a manner which American Gas contends fairly allocates the cost of such services among itself and

its subsidiaries (R. 459–461). Prior to 1932 American Gas charged an engineering fee of 10 per cent on certain enumerated items of capital expenditure, computed monthly, and absorbed as profit the difference between such aggregate fees and the costs of such engineering services (R. 460). The engineering fees collected by American Gas between 1920 and 1932 totaled $18,000,000 (R. 1959).

(*b*) *Bond and Share.*—When Bond and Share was first organized, its technical organization was extremely small, consisting only of a few experienced utility executives, engineers, and accountants competent to assist Bond and Share in assembling and reorganizing its newly acquired properties (R. 394–395). But as the number of these companies increased, Bond and Share established in New York a specialized, technical personnel whose services covered "every ramification of public utility activities and problems, including financing, management, and operation, legal matters, engineering in all of its branches, construction, purchasing, traffic matters, inspection, accounting, rate studies, public relations, dealings with federal, state and local authorities and foreign governments, relations with employees, preparation of statements and reports and special studies and investigations" (R. 1108, 1132). The Bond and Share service personnel grew rapidly; today it consists of over 360 persons with an aggregate payroll of almost a million and a half dollars a year (R. 1066ff., 359). The services rendered by this staff are not essentially different from the American Gas services. They are discussed in detail later in this factual summary (see pp. 82–95, 108–117, *infra*).

When Bond and Share first began rendering services for a charge, probably sometime between 1908 and 1911 (R. 983–984, 397), it was not its practice to make any formal contract in advance defining the particular services to be rendered or the fee to be paid, but it would perform such services as it deemed proper and accept such compensation as might be subsequently arranged (R. 395, 1087–1088). It could abide the result of such *ex post facto* arrangement with complete confidence. The amount of its fee was subject to determination by its own board of directors and the board of the subsidiary company composed in part of its own officers and directors and in part of persons whom it selected and who were the beneficiaries of its largess as members of its "preferred list." In the early days the services rendered were probably limited and the charges small, at least in absolute if not relative amounts (R. 1088).[48]

As the services grew in extent and value Bond and Share found it desirable to formalize the service arrangements with its subsidiaries. Beginning in 1915 Bond and Share adopted the practice of entering into written service contracts with its subsidiary holding and operating companies. These contracts defined the services to be rendered and the rate of compensation to be paid (R. 395).

[48] The service fees charged the holding companies apparently bore little, if any, relation to service performed. For instance, American Company paid, for the first year and five months' services, fees (not including organization fees) approximating $20,000 (R. 1088); from 1926 through 1928, $5,500 per year for general service fees; and from that date till the service contracts were canceled, approximately $80,000 per year for the same general service (R. 1815).

By 1917 service contracts had been made which covered all services then being performed for all companies within its system (R. 396). Some of these contracts were made directly with the serviced operating companies while others were made with the sub-holding companies but applied to their operating subsidiaries (R. 396). These contracts were of similar tenor, although they varied among themselves in minor details. Thereafter, as Bond and Share consolidated its properties into intermediate holding-company systems, the contracts with the intermediate holding companies would provide for the rendering of services to all subsidiary operating companies, and would bind the holding companies to bring the operating companies under Bond and Share service arrangements (R. 398, 1102, 1106).[44]

In 1922 the form of service contract employed for all serviced operating companies was completely standardized so that identical terms would be applicable to every company, irrespective of the intermediate system into which it happened to fall (R. 399). Such form required, as the current form requires, that the operating subsidiaries of an operating company which is itself a holding company be brought under the contract (R. 1134, 1143–1144, 1153, 1170). In 1929 new standard forms were adopted for all serviced hold-

[44] For example, National Company agreed to pay Bond and Share any difference between the sum that Bond and Share would receive, provided each subsidiary of National Company should effect a service contract with Bond and Share, and the sum Bond and Share in fact did receive from contracts with such subsidiaries (R. 1103).

ing companies and all serviced operating companies (R. 399). Changes were made from time to time in the rates, but the changes were applied uniformly to all companies (R. 399). These service arrangements and changes admirably characterize the "unified plan of management," which is "the central idea on which Electric Bond and Share Company is operated" (R. 1047).[45]

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[45] At the same time that Bond and Share formalized and standardized its service relations with its subsidiaries through the execution of the series of contracts above described, it increasingly endeavored to obscure the true measure of control which it exercised over the subsidiaries in the rendition of such services. The stipulation recites that Bond and Share's service organization grew, with the development of the sub-holding companies and their subsidiaries, from a few men into a centralized technical organization with numerous departments, each performing a specialized service (R. 394–395). While it thus appears that these services became more pervasive with the years, there is no indication that the fundamental control relationship between Bond and Share and its subsidiaries was altered in the slightest. Yet the contracts themselves demonstrate an increasing effort to obscure this relationship. Thus the service contract with Carolina Power and Light Company, dated December 15, 1914, frankly states that "commencing January 1, 1915, we propose to take charge, under your direction, of the management and development of the property owned or controlled by your company. * * * The local manager of your company will be employed subject to your approval and at your expense. He will keep us advised of all matters connected with the operations and local standing of your company and, subject to the approval of your president, will carry out our instructions in the operations of your company" (R. 1089–1090).

The standard form of contract with operating companies prepared in 1922 is somewhat more cautious. There it is

In November, 1935, the service arrangements were abruptly but uniformly cancelled with all serviced holding companies (R. 399), leaving the intermediate holding companies without any medium of contact with their operating subsidiaries (R. 1191-1192).

Bond and Share services are classified and described in the service contracts as (1) supervision and general services, and (2) special services (R.

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stated that: "The entire organization of Electric Bond and Share Company, embracing the following departments and divisions—

Auditing	Insurance
Commercial and Merchandising	Investigations
Comptroller's	Operating
Construction	Public Relations
Corporation and Law	Purchasing
Efficiency and Betterments	Rate
Engineering	Secretarial
Executive	Securities
Financial	Statistical
Foreign	Traffic
Inspection	Treasury
	Valuation

becomes, in effect, a part of the organization of each company for which it acts" (R. 1133).

Finally, we come to the language of the 1935 standard form of contract in which the role of Bond and Share is couched in the following language: "We submit this Proposal under which your Directors and officers, in the management and operation of your properties and business, will have the benefit of the supervision and general and special services of our organization. In the practical operation of this plan, our organization becomes an auxiliary to your own organization; functioning at all times, however, in cooperation with and subject always to the control of your Directors and officers" (R. 1153).

1153, exhibit 62). For supervision and general services a fee is charged based on gross operating revenues (R. 1169–1170). For the special services, special fees are charged. Special fees for the sale and marketing of securities are based upon a percentage of the principal amount of the securities sold (R. 1173–1176). For construction undertaken by Bond and Share's construction subsidiary, a special fee based upon a percentage of the cost of construction is taken by the construction subsidiary (R. 1180). For supervising work done by a general contractor, a special fee based upon a percentage of the cost of construction is also taken by the construction subsidiary, such fee being one-half the fee charged when the construction work is undertaken by the construction subsidiary itself (R. 1182). For engineering in connection with construction, for special investigations, reports, rate studies, accounting investigations, field audits, and system installations, special fees are charged equal to the compensation paid by Bond and Share to its specialists and other employees engaged on the work, plus an additional 50 per cent of such amount in the case of auditors, and 90 per cent in the case of other employees (R. 1184–1185).[46] The serviced operating companies also pay in connection with the general serv-

[46] Since November 25, 1935, efficiency and betterment studies, rate studies, and new business investigations, accounting investigations and system installation studies have been performed without charging any special fee such as is still provided for in the service contract. The serviced companies were not notified of this change in practice until May 1, 1936 (R. 391).

ices substantial expenses incurred by Bond and Share during the regular course of the performances of its services (R. 1827). Such reimbursable expenses include "any expenditures made by us [Bond and Share] for your [the serviced company's] account or for account of your controlled companies, including expenses of members of our organization when absent from New York in your service or in the service of your controlled companies" (R. 1186; see also R. 1206 for similar provision in the holding-company service contract).

All these service arrangements, general and special, were devised to put the Bond and Share service organization in a position to enforce its view concerning every phase and detail of the operations of the serviced operating companies. The Bond and Share service organization "becomes, in effect, a part of the organization of the Operating Company for which it acts" (R. 1108). It is true that service contracts for the most part are couched in language which suggests that Bond and Share will only advise, suggest, or recommend, and that final action rests with the serviced company. As a formal matter the contracts could not be written otherwise, as neither the courts nor the state authorities could recognize the binding character of a contract upon the part of a public-utility company which divested the utility company of its corporate powers and authority over the management of its own property. But there is no evidence of any serious difference of opinion ever having arisen between Bond and Share's service

organization and a single one of the numerous operating companies taking its service. Changes initiated by Bond and Share and unanimously adopted by the serviced companies have involved increased charges for unchanged services (R. 399, 1815) and decreased services for unchanged fees (R. 401–405).

The dealings between Bond and Share and the serviced companies are conducted on an informal basis (R. 360). Not only are its recommendations normally and usually followed, but when a request is made by a serviced company for a particular service, that request as frequently as not originates in a suggestion of Bond and Share's representative (R. 360). So unified and harmonious has been the Bond and Share plan of management that the serviced companies and Bond and Share in dealings with each other employ the same New York law firm. And the serviced companies have never had occasion to employ legal representation separate from that offered by Bond and Share or Bond and Share's New York counsel (R. 385).

Bond and Share has never hesitated to avow its control over its subsidiaries whenever such avowal served Bond and Share's interests. In 1912 Bond and Share entered into a contract with General Electric Company for the purchase of electric apparatus and supplies by its operating subsidiaries. So confident was Bond and Share of its control over its subsidiaries that it agreed in this contract to cause them to purchase their requirements for electric apparatus and supplies from General Electric Company. And the fact of such control

was not left to implication; it was expressly stated in the contract itself in the following language (R. 1607,1609):

> The Bond and Share Company agrees to cause to be purchased from the General Company such electrical apparatus, supplies and turbines required by it or by the Subsidiary Companies in its or their business of Central Station lighting or for other purposes. * * *
>
> It is further agreed that the terms of this agreement and of the riders, schedules or subsidiary agreements which are, or which shall hereafter, be attached to or made a part of this agreement, shall apply to all companies not enumerated in attached schedule in which the Bond and Share Company shall obtain ownership or a controlling or operating interest (providing the General Company shall be free to sell to such company); and the Bond and Share Company agrees to promptly notify the General Company in case they acquire ownership or a controlling or operating interest in any company not enumerated in attached Schedule.
>
> It is also agreed that if at any time by reason of change of interest, ownership or control the Bond and Share Company shall be unable to control the purchases of equipment by any of the Subsidiary Companies due notice shall be given the General Company and this agreement shall no longer be applicable to said subsidiary company.

As in the case of the intra-system service contracts, the General Electric contract was later revised in an effort to avoid this admission of con-

trol.[47] In the new contract made in 1933 (R. 412), we find the reference to controlled subsidiaries supplanted by a euphemistic identification of these companies as "client companies."[48]

The service contracts are of little value as an accurate gauge of Bond and Share's self-appointed rights and duties thereunder. Until 1929

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[47] The wording of the contract was changed shortly after the decision in *Federal Trade Commission* v. *Smith*, 1 F. Supp. 247 (S. D. N. Y. 1932). In that case, the court, relying in part upon this undertaking of Bond and Share to secure purchases of General Electric equipment by Bond and Share controlled companies, decided that Bond and Share was engaged in interstate commerce in the purchase and sale of equipment.

[48] The provisions of the two last paragraphs of the old contract just quoted become in correlative provisions of the new (R. 1612–1613): "The terms of this agreement and of the riders and schedules which are or may be attached hereto shall apply, from the date of notice by Bond and Share Company to the General Company, to any additional company which shall become entitled to be listed hereunder as a Client Company, provided such terms will not conflict with any existing obligation of the General Company or of such additional Client Company. Quantity discounts and purchases by such additional Client Companies shall apply from date of notice to the General Company of the addition of such company or companies to the list of Client Companies. If any Client Company so listed ceases to be a Client Company of Bond and Share Company, this agreement shall forthwith cease to be applicable to such Client Company and thereafter such former Client Company shall not be entitled to any of the discounts provided hereunder. If any such company so listed shall cease to be a Client Company during the existence of this agreement, Bond and Share Company will promptly notify the General Company of the change in status of such former Client Company."

substantially the same form of service contract describing the same services was entered into with the holding defendants as with their operating companies, though many of the services described could be performed only for operating companies. The important question of the amount of Bond and Share's compensation cannot be determined from the face of these contracts. Thus a comparison of the engineering service offered to the serviced companies (R. 367–368, 385–388) with the description of general and special engineering described in the present service contracts (R. 1165–1166, 1177–1178, 1183–1184) will disclose the futility of determining when the operating company shall owe a special fee and when the general fee shall cover the service. Interminable disputes would have arisen as to which services were general and which were special and as to which expenses were to be borne by Bond and Share and which by the serviced companies if Bond and Share and all these companies had not been under a common control and "a unified plan of management." Further, there are constant variations between the service performed and that described in the contract. Bond and Share had admittedly altered from time to time the nature and scope of its services in minor details without troubling to change the terms of the contracts or the fees to be paid (R. 401–405). Bond and Share has ceased to perform numerous services of a clerical or mechanical nature, although the services are still included in the service contract (R. 1158, 1160–1161,

1184).[49] Nor are the service contracts any more reliable as a description of the nature of the services which Bond and Share or Ebasco continue to render. Thus the service contract states that "we will advise and assist in formulating a development program covering your important construction requirements * * *. We will advise and assist in the preparation of your annual construction budgets, review the estimated costs of the items therein, recommend as to the advisability or necessity thereof and advise as to the time for initiating and carrying on the contemplated work" (R. 1159–1160). As a matter of fact, as we shall point out below (pp. 92–95, *infra*), what appears to be mere wholesome advice in the service contract

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[49] Bond and Share has ceased to prepare and transmit notices of stockholders' and directors' meetings, has ceased to prepare the agenda for such meetings and certified minutes thereof, and has ceased to act as transfer agent or to make special audits and to pay dividends for serviced companies (R. 401–405). Though these services are of a clerical nature, it is these services especially which might have justified, at least in part, the exorbitant fees charged by Bond and Share. The payment of dividends alone is a costly undertaking for each operating company and so, according to the report of the Idaho Power Company, entailed a great saving when performed by Bond and Share (R. 1746–1747). Still it is to be remembered that these services ceased uniformly for each company and no company asked for, or received, recompense by way of a reduced service charge, and that these changes were made irrespective of the terms of the service contracts which, in fact, still demand performance of each of the above services (R. 1158, 1160–1162, 1184).

turns out in practice to be a virtual veto power by Bond and Share over every item of capital expense of the operating companies so that they may not spend a penny for construction, even in emergencies, without securing Bond and Share's prior approval.

Even a cursory examination of the sections of the stipulation dealing with the services performed by the Bond and Share organization (R. 352–428, 1648–1768) reveals that there is not an important matter, whether relating to operations, engineering, construction, financing, public relations, services provided, or rates charged the public, upon which Bond and Share does not pass its judgment. The elaborate reporting system embracing financial and operating reports, cash reports, construction reports, operating budgets, sales budgets, construction budgets, cash budgets, master budgets, and other reports (R. 405, exhibits 67–81) could not have been more calculatingly devised to give Bond and Share control over the minutest acts of its subsidiary companies. Every month and at a set day Bond and Share demands at least six separate reports, each containing a number of forms, to be prepared and transmitted to it by each of its serviced companies (R. 1240–1241). The methods of accounts and the form of reports are prescribed in greatest detail with the obvious purpose not only to enable Bond and Share to be informed as to the affairs of any particular operating company but to be in a form which will permit of ready consolidation for a comprehensive picture of the operation of the entire system.[50] The "Recommendations"

[50] The accounting methods and report forms prescribed by Bond and Share in the most minute detail give complete

of Bond and Share are written on the assumption that the serviced company has followed in the past and will follow in the future the forms and procedures suggested (R. 1288ff., exhibit 70).[51] In dealing with companies under the management of men who owe their positions and look for promotion to Bond and Share (R. 338, 365, 1163, 1782, 1808) and who are rewarded by a place on Bond

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assurance that these affairs (at least in so far as they relate to the important question of maintaining accounts) will be conducted in strict and uniform accordance with the practices which Bond and Share has worked out. Thus Bond and Share directs that "beginning January 1, 1933, each operating company will accrue monthly, on its books of account, a proportionate amount of dividends on its preferred stock outstanding, when the payment of the dividends at the customary time may be reasonably expected" (R. 1261). That Bond and Share determines the accounting practices of its subsidiaries, literally to the last penny, is further illustrated in the mandate contained in the explanation of "sales and new business report forms"—"Throughout revised Forms 9036 and 9037, *Drop the Cents.* Show figures in dollars only—*not the Nearest Dollar, but Merely Drop the Cents*" [italics in original] (R. 1294).

[51] A cursory examination of the forms and procedures will demonstrate that utter confusion would otherwise result. Thus on December 10, 1935, the general auditor of Ebasco advised all of the serviced companies of a contemplated change in the new business and merchandise report forms (R. 1288). On December 31, 1935, these forms were transmitted to the serviced companies with the following statement: "Use of the present New Business and Merchandise Reports (revision of January 1, 1931) should be discontinued after the Financial and Operating Report for the month of December, 1935. The new Sales and New Business Reports should be prepared and should form a part of the regular monthly Financial and Operating Report beginning with the report for the month of January, 1936" (R. 1290).

and Share's "preferred list" (R. 420), Bond and Share was not likely to encounter, and Bond and Share did not encounter, any objection to its performance or any dissatisfaction with its advice (R. 360).

Attention is particularly directed to exhibit 73 (R. 1314ff.) and exhibit 75 (R. 1378) containing instructions regarding the construction budget and the expenditure requisition system, which illustrate the elaborate precautions taken by Bond and Share to ensure its effective and constant control of capital expenditures.

The construction budgets are directed to be prepared on standard forms to facilitate the work of Bond and Share and to simplify the consolidation of the construction budgets of the various operating companies in a holding-company system (R. 1314). The tentative annual budget must be forwarded "not later than December 15 for review by and recommendations of Electric Bond and Share Company's organization," and "for consolidation with the Construction Budgets of other operating companies in the same Holding Company Group" (R. 1319).[52] This budget may

[52] The consolidation of the operating budgets is a matter of considerable importance if the operating companies are to rely upon Bond and Share or their intermediate holding companies for temporary financial assistance from time to time, as has been not unusual in the past (R. 419). Prior to 1931, Bond and Share encouraged upstream loans and lateral loans between companies in its system (R. 1831ff.). Although few try to justify such loans today, the use of such loans did permit the holding companies to utilize funds available in any part of their system to meet unexpected exigencies in other parts. The discontinuance of upstream

not be adopted by the board of directors of the operating company until they obtain the approval of the Bond and Share service organization (and prior to November 25, 1935, of the parent subholding company), as evidenced by Bond and Share Form No. 9154 (R. 1319, 1373n., 1377).

Each item in the budget, as it is submitted to the board of directors of the operating company on Bond and Share Form No. 9154 after it has been recommended for approval by Bond and Share, shows only the budget items, the costs to be incurred "as forwarded by field," and the costs to be incurred as "recommended for approval" (R. 1377). The form does not disclose to the local board of directors the reasons for the suggested changes in the budget as prepared in the field or

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and lateral loans has made the preparation of consolidated budgets all the more important to holding-company managements. Up to November 25, 1935, it was the practice for each of the intermediate holding companies in the Bond and Share system formally to pass upon and approve the budgets of their operating subsidiaries after they had been reviewed by Bond and Share but before they were submitted for approval to the boards of the local operating companies. Since November 25, 1935, this formality has been dispensed with and the intermediate holding companies, and those who control them, are content to leave the matter of the approval and consolidation of the budgets to Ebasco. This effects no substantial change, since prior to November 25, 1935, Bond and Share did this work for the intermediate holding companies under its service contracts with them (R. 408 f. 1224; 1193 f. 3579); the intermediate companies had no staff then, and have no staff now, equipped to pass upon the details of these budgets. The holding companies, like the operating companies, are content to leave these matters completely in the hands of Bond and Share.

the questions of policy involved. And the form reaches the local board at a date too late to allow time for substantial or intelligent revision (R. 1319–1320).

Amendment to any budget item or its cost also requires renewed authorization from Bond and Share in a similar manner (R. 1326–1327). Even in cases of unusual emergency, Bond and Share's supervising sponsor is to be communicated with by telegraph or telephone (R. 1328 f. 3983).

Bond and Share's control over the purse strings of its operating subsidiaries does not stop here. For a "Construction Budget as finally approved gives authorization for expenditures on budget items for Proposed New Work only in the sense that it authorizes the management to have prepared and to approve Expenditure Requisitions covering such items, when and if the undertaking of the actual work becomes necessary" (R. 1322). The instructions governing the procedure for obtaining an expenditure requisition are equally rigid. "The Expenditure Requisition form 9160, is recommended for adoption by all companies *without modification,*" and "it is requested that one copy of each Expenditure Requisition, after authorization by the Company's management, be sent to the supervising Sponsor for his information and that of the Sponsor Accountant and Sponsor Engineer" (R. 1379). Departures from the budget are strictly enjoined. Where its control of the purse is involved, Bond and Share's advice is imperative. The procedure is stated in the following terms (R. 1385):

> The management will not, except in emergencies, authorize an Expenditure Requisi-

tion for work within the scope of the Construction Budget until Construction Budget authorization has first been obtained, either in the original Construction Budget for the year or in Additions thereto.

In emergencies where prompt action is required, the management may, *after consultation with the supervising Sponsor in Electric Bond and Share Company's organization,* authorize an ER for work not previously authorized in the Construction Budget. Any work so authorized is then to be included in the next Addition to the Construction Budget.

Bond and Share does not rely exclusively upon the reports of its operating companies to keep itself informed of and to maintain control over their activities. Bond and Share's sponsors and its specialists are constantly in the field following minutely every phase of the work of the operating companies (R. 362–366). Nothing pertaining to the operating companies is too confidential for the eye of the operating sponsor. He even sees all important correspondence or reports which the operating companies receive from third persons (R. 364). In a practical world it is impossible to say that the numerous operating, accounting, engineering, budget, rates, and sales sponsors and representatives of Bond and Share in the field are there simply as counsellors to advise the operating companies and not also as inquisitors to report to Bond and Share what action will best promote Bond and Share's interests.

Such have been the service arrangements between Bond and Share and its subsidiaries, and such substantially are the arrangements today save

for a few formal changes in the internal organization of Bond and Share which we proceed to explain.

The formation of Ebasco.—A day or two before the present proceeding was instituted, Bond and Share incorporated its service organization as a separate corporation under the name of Ebasco Services Incorporated (R. 352). Bond and Share had a month earlier discussed with representatives of the serviced companies its intention so to do (R. 356), but the local boards were never consulted on the advisability of the move (R. 357). On November 25, 1935, the serviced companies were advised by Bond and Share of the proposed assignment of the service contracts to Ebasco and informed that "the personnel of Ebasco Services Incorporated will be practically identical with the service personnel heretofore maintained by Electric Bond and Share Company and your company is to receive from Ebasco Services Incorporated the same services as in the past and under the same contract" (R. 356, 1058); and that "Ebasco Services Incorporated is and will continue to be a 100% owned subsidiary of Electric Bond and Share Company" (R. 1059).

Ebasco was incorporated with an authorized share capital of $2,600,000, all subscribed by Bond and Share (R. 353). Only part of the capital was subscribed in cash (R. 1052ff.). $1,329,000 represented the valuation placed upon the capital stock of Phoenix Engineering Corporation, Bond and Share's wholly owned engineering and construction subsidiary, and the capital stock of Two Rector Street Corporation, another Bond and Share wholly owned subsidiary, which holds title to Bond

and Share's office building in the financial district of New York (R. 355, 1082). The capital stock of both of these companies was transferred by Bond and Share to Ebasco. It is not an unfair inference that capital stock of Two Rector Street Corporation represented virtually the whole of the $1,329,000 valuation placed on the securities transferred to Ebasco, as it is unlikely that Phoenix required, or had, any substantial amount of capital to do its business. Be that as it may, the working capital of Ebasco at the time of organization was approximately $1,270,000.

Ebasco, wholly owned by Bond and Share—manned by Bond and Share's former personnel and under the direction of a board selected by Bond and Share and a majority of which are either directors or officers of Bond and Share or subsidiary companies of Bond and Share (R. 357, 359, 1061 ff.)—carries on the service arrangements of Bond and Share substantially as before, except for the formal cancellation of the service contracts with the intermediate holding companies. If Ebasco's sole function were to advise the serviced companies rather than to advise Bond and Share as to the management of its properties and investments, it is difficult to understand why Bond and Share denuded itself completely of any staff, leaving on its own payroll not more than 30 persons, more than half of whom are junior clerks (R. 1065–1069). Of the present executive officers of Bond and Share, all but one vice-president are also engaged as the principal officers of Ebasco and are now drawing a salary from both Bond and Share and Ebasco no greater than that formerly paid by Bond and Share alone (R. 1061–1065). If Ebasco

was intended to assist Bond and Share as well as the serviced companies, the functional charts of Ebasco take no account of this dual obligation (R. 2102), nor do the accounts of Ebasco disclose how much of its expenses may be charged to looking after Bond and Share's investments and how much to the cost of servicing the operating companies (R. 1082–1085).

Profits from service contracts.—Bond and Share for years past has made and Ebasco now makes, despite successive reductions in fees grudgingly and belatedly made as a concession to public opinion,[53] enormous profits from service contracts. The service fees exacted by Bond and Share during the past ten years from its domestic companies (excluding all fees exacted from American & Foreign Power and its subsidiaries) were (R. 1815):

Year:	*Total service fees*
1926	$9,820,030.47
1927	7,646,104.78
1928	6,946,143.29
1929	6,350,434.85
1930	8,232,613.12
1931	7,318,604.88
1932	3,908,519.81
1933	2,953,473.44
1934	2,763,334.80
1935	2,710,276.93

(The figure for fees in 1935 is for services rendered from January 1 to November 25.)

[53] The successive schedules for determining general service fees exaggerated the actual reduction of fees. In 1922, the percentage of gross earnings to be applied was based upon earnings per year; in 1934, upon earnings per month (R. 1144, 1170). Under the monthly basis few companies, if any, could reach the low percentage ratings (R. 953, 977, 989). Construction fees remained unchanged during a period of 15 years prior to May 1936 (R. 1150, 1180).

Prior to March, 1933, the books of Bond and Share did not segregate the expenses attributable to the performance of services for the domestic companies, from either Bond and Share's general corporate expenses or from its expenses in servicing the foreign operating companies in the American & Foreign Power system. Its books, therefore, did not on their face reflect the profits which it reaped from its domestic business prior to that date; and since that date, expenses attributable to servicing the domestic holding companies remained unsegregated from Bond and Share's own corporate expenses so that figures from profits resulting from services were still not available. The Federal Trade Commission, however, after an examination of the company's books for the year 1931, calculated that the net profits realized from services during that year were 113 per cent in excess of the expenses attributable to such services (Report of the Federal Trade Commission to the United States Senate, 70th Congress, 1st Session, Senate Doc. No. 92, Part 72–A, p. 621). That is, for every dollar paid to Bond and Share by the serviced company for services, over 50 cents represented clear profit to Bond and Share. Moreover, prior to 1929, Bond and Share's annual income from service fees received from the domestic companies alone was greater than the total expenses, excluding taxes, attributable to all functions of Bond and Share including servicing its far-flung foreign empire. In 1926 this income was more than twice such expenses (R. 1815, 1823). In 1934 and 1935, more than one-third of the total income of Bond and Share was derived from service fees paid by its domestic subsidiaries (R. 1815).

These fees have been exacted from numerous holding and operating companies whose preferred stocks were in default [54] (R. 904 ff.), and from some companies seeking relief under section 77B of the Bankruptcy Act (R. 416).

Since the segregation of Bond and Share's service organization in Ebasco, Ebasco has continued to reap the same extraordinary profits from these service arrangements. In scarcely more than five months following its organization, Ebasco has received a net income, after all expenses including retirement allowances and taxes, of $621,968 (R. 1086). This was at the rate of more than 100 per cent per annum on its working capital of $1,270,000 (see pp. 96–97, *supra*). The gross income for the five-month period was $1,765,524 (R. 1086), so that over 35 cents out of every dollar taken in by Ebasco represented pure profit.

Such are the opportunities for profit which may accrue to holding companies by reason of their con-

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[54] The following table summarizes (as of the time of the District Court's consideration of the instant case) dividends of serviced operating and holding companies in arrears since the date of acquisition by the Bond and Share system. (R. 904ff., exhibit 31):

I. Operating companies

Preferred stock:	
Total in arrears to Bond and Share system	[1] $6,767,000
Total in arrears to public	16,886,000

[1] Includes $4,930,000 in arrears to United Company on United Gas Public Service Company second preferred stock (see exhibit 20, R. 801).

II. Intermediate holding companies

Preferred stock:	
Total in arrears to Bond and Share system	[2] $24,615,000
Total in arrears to public	48,170,000

[2] Includes $23,223,000 in arrears to Electric Company on United Company second preferred stock (see exhibit 20, R. 799).

trol through stock ownership over operating companies. The reasonableness of a Congressional regulation requiring that the facts upon which such profits are based be made known to the Congress, the state regulatory bodies, and the public, cannot be denied.

B. INTERSTATE COMMERCE

1. INTERSTATE TRANSMISSION OF ELECTRIC ENERGY AND INTERSTATE TRANSPORTATION OF GAS

Bond and Share and each non-exempt holding and holding-operating defendant are engaged, themselves or through one or more subsidiary companies under their control, in the sale and transmission of electric energy or gas in interstate commerce. Such interstate business is not spasmodic or casual, but continuous and substantial.

Although Bond and Share and the holding defendants are not themselves operating companies, the constituent operating companies which they control regularly transmit as well as receive enormous quantities of electric energy in the normal conduct of their operations. Bond and Share operating companies generate annually 11.8 billion kwh of electric energy (R. 2061), and of this amount approximately 3.7 billion kwh (R. 2053), or more than 31 per cent, are transmitted across state lines. More than half of the energy transmitted across state lines is sold to an associate or non-associate company; less than half is sold at retail by the transmitting company (R. 2059). Of the 14 billion kwh of electric energy transmitted in interstate commerce by all companies in the United States, 3.7 billion kwh, or approximately 25 per cent, were transmitted by companies in the Bond

and Share system (R. 2231–2232, finding 32).[55] More than 23,460 miles of transmission lines (or 30.2 per cent of the total mileage of transmission lines within the United States) are owned by companies within the Bond and Share System (R. 2061; 2231, finding 31). The extent of the network of transmission lines within the Bond and Share system traversing state lines may be seen from a glance at the maps printed as exhibits to the stipulation (R. 2114–2159).

The following table shows the quantity of interstate transmission within each of the principal intermediate holding companies within the Bond and Share system for the year 1934:

Ratio of interstate transmission to generation of holding defendants for the year 1934

System	1 Total generation m-kwh	2 Interstate movement definitely ascertained (deliveries across State lines) m-kwh	3 Energy not included in column 2, an unidentifiable part of which was delivered across State lines, m-kwh	4 Minimum percentage interstate movement (column 2 against column 1)	5 Maximum percentage interstate movement (columns 2 and 3 against column 1)
American Gas (R. 2001-2003)	3,517,386	2,173,847	120,966	60.8	65.2
Electric Company (R. 1987)	1,879,226	685,076	35,390	36.4	38.3
American Company (R. 1981)	3,872,281	475,044	362,371	12.2	21.6
National Company (R. 1985)	2,547,604	346,701	353,716	13.6	27.4

The gas business of the system ranks among the leading gas holding-company systems of the country, and a very large part of this business is interstate. Subsidiary gas companies operate in 15 states of the United States and in Mexico, with

[55] See p. 42 n., *supra*.

producing properties of a million and a half acres of gas leases, and more than 6,000 miles of main gas line (R. 620). 450,000 customers are served, and annual production and purchases of gas amount to more than 213 billion cubic feet (R. 620). The operating revenues from gas sales amount to $45,000,000 per annum (R. 308, 313, 318, 324). The constituent companies engage extensively and continuously in the interstate transportation of gas by trunk pipe lines. Out of the approximate total of 213 billion cubic feet of natural and manufactured gas handled within the system, 91 billion, or 47 per cent, were transported across state lines (R. 622), which amounts to more than 20 per cent of the total interstate gas transportation in the United States (R. 2235–2237, findings 42–49). The arteries of interstate pipe lines under the control of Bond and Share companies may be seen from a glance at the maps printed as exhibits to the stipulation of facts (R. 2160–2165).

2. SECURITY OFFERINGS AND ACQUISITIONS

We have already shown how Bond and Share and its intermediate holding companies were created for the purpose of acquiring utility assets and arranging the public financing of such acquisitions by security offerings. Indeed, the holding-company form has been utilized by Bond and Share principally as a financing device. As the president of Bond and Share has stated: "You cannot always go to stockholders you have and ask them to put up a lot more money for something else. They may not want to do it. And so a new group of properties were assembled and a new holding company was created and its securities offered to

the public, and anybody that wanted to buy them bought them" (R. 1045).

An interstate empire cannot be built up by local acquisitions locally consummated. The assembling of properties throughout the United States by Bond and Share and its subsidiary holding companies could not have been effected without the sending of legal, engineering, and financial representatives across state lines to inspect the properties and make preliminary appraisals and examinations. Such deals cannot be, and are not, consummated without repeated interchange of ideas, extensive correspondence, and voluminous reports, and offers and counter-offers passing through the mails and the channels of interstate commerce. Such deals cannot be, and are not, consummated before plans are worked out to finance them by the public offering of securities through the mails and the channels of interstate commerce. And when in fact such deals were arranged by the defendants, securities were created to finance them, and these securities were passed up from the operating companies and the lower tiers of holding companies to Bond and Share which, either as owner or agent, saw to their sale through investment bankers to the investing public in every state of the Union.

This process was continued even after new acquisitions had been financed. When the operating companies required funds, instead of going directly to the public, they passed their securities up through the holding companies to Bond and Share at the top of the pyramid to arrange their sale through bankers to the public. The securities were distributed by bankers in New York and marketed in every state. Investment funds flowed across

state lines to New York, and then what was left after the deduction of banking and holding-company commissions flowed back across state lines into the operating properties (R. 415–427).

Bond and Share has sold hundreds of millions of dollars of preferred stocks and bonds to the public through the arteries of interstate commerce (R. 1854–1896; 2245–2246, finding 57). In the case of a public offering of securities of any company within the Bond and Share system the selling circulars, which are prepared in New York and distributed widely by bankers in all parts of the country, always bear an imprimatur which indicates the supervision exercised by Bond and Share (R. 423, 466). When the securities of companies other than American Gas and its subsidiaries are being offered, the selling circulars state that "the issuing company is supervised (under the direction and control of the board of directors of the issuing company) by Bond and Share" (R. 423).[56] When the securities of any American Gas company are offered, the circulars state: "The finances of the American Gas and Electric Company and of its subsidiaries have always been handled through the Electric Bond and Share Company" (R. 466). And exhibit 96 (R. 1854–1893) shows that Bond and Share, in the 11-year period from 1920 through 1931, handled public offerings of 183 issues of bonds with a total principal amount considerably in excess of a billion dollars, and public

[56] An interesting commentary on Bond and Share's efforts to mask the control exercised by it over its subsidiaries may be found in the fact that prior to 1924 these selling circulars omitted the parenthetical statement from the foregoing quotation.

offerings of 66 issues of preferred stock aggregating three and one-half million shares. Bond and Share sold 238 security issues in 131 months, or an average of nearly two issues a month (R. 1854–1896). In an active year like 1924, Bond and Share sold 29 issues of bonds having a face value of $73,731,000 and 18 issues of preferred stock with a par value of $26,304,400 (R. 1863–1865). Thus in 1924 Bond and Share averaged four public offerings a month. It is quite clear, therefore, that in carrying out this business Bond and Share is continuously active in behalf of itself and its associate companies in offering securities to the interstate market. In recent years, due to financial conditions, very few securities have been sold, and to get an accurate picture of Bond and Share in operation a normal year must be taken. The demand for electric energy is rapidly catching up with existing facilities; financial reorganizations will be undertaken not only because of the Holding Company Act but because of the tax policy of the Government, and new security offerings may at any time be imminent. Ebasco is now equipped to handle the financing of all companies within the Bond and Share system (R. 415, 1171; 2245–2246, finding 57).

The customer-ownership campaigns for the sale of the preferred stocks of the operating companies within the system are also conducted by use of the mails and the channels of interstate commerce. Sometimes Bond and Share purchases the preferred stocks of the operating companies and sells them for its own account to their customers; sometimes it sells the stock as agent for the operating companies (R. 424). But in either case "active di-

rection" of the selling campaign in the field is taken by the securities department of Bond and Share (R. 425, 464). The certificates are prepared in New York. The key men are trained in New York. The legal work is done in New York. The literature is either prepared in New York or under the direction of key men sent out from New York (R. 425–426). In this manner from 1920 to 1935 Bond and Share sold in customer ownership campaigns 2,117,543 shares of operating companies' preferred stock having a par value in excess of $200,000,000 (R. 1894–1895). Dividends are now in arrears on many of these issues (R. 905–911) (see p. 100 n., *supra*).

Finally, in keeping the operating companies supplied with temporary funds, Bond and Share itself, or through the intermediate holding companies, is continually using the mails and channels of interstate commerce. When temporary funds are needed by an operating company, Bond and Share arranges for a loan, in some cases from a bank but generally from itself or an intermediate holding company (R. 419).[57] In the past ten years Bond and Share has arranged for loans to companies outside of New York aggregating more than 490 million dollars, or more than 49 million dollars per year (R. 1831–1853).[58]

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[57] The interest paid to Bond and Share or a holding company on these loans has always been materially higher than that paid to an outside banker from whom Bond and Share negotiated a loan (R. 1831–1853).

[58] Before 1932 Bond and Share made extensive use of lateral and upstream loans amounting to many millions of dollars (R. 419, 1831ff.). From 1925 to 1932, such upstream loans totaled approximately 190 million dollars, and lateral loans, 50 million dollars (R. 1831ff.).

There is no reason to expect that Bond and Share or the other defendants have ceased or will cease their activities in the sales of securities, negotiation of loans, or in the acquisition or exchange of properties. Bond and Share and the other defendants have each alleged that it is essential to the normal and ordinary conduct of its business and the use and development of its property to use the mails and the instrumentalities of interstate commerce to make public offerings of securities and to make acquisitions of securities of utility and holding companies and of utility assets, as defined in the Act (R. 159, 2247, finding 60). And they have alleged in effect that each will continue to engage in such activities without registering, unless otherwise ordered by a final decree not thereafter reversed or vacated (R. 270).

3. SERVICES AND COMMODITIES

The defendant Bond and Share (through its wholly owned subsidiary, Ebasco, and Ebasco's wholly owned subsidiary, Phoenix Engineering Corporation) is constantly and continually engaged in furnishing a wide range of services to the subsidiary operating companies located in thirty-two "states from Pennsylvania to Oregon and from Minnesota to Florida" (R. 282, 2114, 2160, 2237–2238, finding 50). Defendant American Gas is also rendering a variety of services within its intermediate system to subsidiary companies in nine states (R. 430).

Both Bond and Share (R. 283) and American Gas (R. 286), as well as Ebasco (R. 353, 361), are New York corporations. Phoenix is a Delaware

Corporation (R. 355), but its separate existence is maintained only because of technical requirements of New York law (R. 355). The principal office of each of these companies is maintained in New York (R. 283, 286, 361 f. 1083, 444 f. 1330). Their service organizations are concentrated in New York (R. 358 f. 1074, 436, 443–444). Neither Bond and Share (R. 283) nor American Gas (R. 286) has at any time been qualified to do business in any state outside of New York. Ebasco has qualified to do business in some states outside of New York, but in none of these does it maintain any personnel other than statutory agents in its statutory or qualification office (R. 361). None of the operating companies which Ebasco serves or which American Gas serves is located in the State of New York (R. 2115). Consequently, "all communications between Ebasco and the serviced companies, by means of the mails, the telephone or the telegraph, and all travel by officers and employees of Ebasco and of the serviced companies between the offices of Ebasco and the properties of such serviced companies require communication or travel across state lines" (R. 361–362; 2239–2242, finding 53). Similarly, all communication between American Gas and its operating subsidiaries requires communication or travel across state lines (R. 444; 2244, finding 56). Every service rendered to the operating companies, either by Ebasco or American Gas, demands some interstate movement, communication, or traffic.

Defendants' answer admits that Ebasco "by the use of the mails or means or instrumentalities of interstate commerce, is and will be engaged in tak-

ing steps in the performance of its existing service contracts with operating public utility companies" (R. 116); that Phoenix Engineering Comporation "in the ordinary course of its business by the use of the mails or means or instrumentalities of interstate commerce, negotiates and enters into construction contracts with operating public utility companies," and "in the ordinary course of its business, by use of the mails or means or instrumentalities of interstate commerce is engaged in taking steps in connection with the performance of such construction contracts" (R. 119); and that American Gas "furnishes, through use of its own personnel, to its subsidiary operating utility companies managerial, financial, accounting, auditing, commercial, purchasing, valuation, engineering, insurance, statistical and other services" (R. 153–154), the performance of which involves "the transportation in interstate commerce * * * of reports, stationery, forms and clerical material, the use of facilities of interstate commerce in the transportation of officers and employees, and interstate communication by use of the mails, telephone and telegraph" (R. 124); and that the performance of these contracts involves violations of the Act (R. 159).

But defendants contend that "none of said services * * * constitutes interstate commerce" (R. 149). Apparently defendants are not contending that these service contracts do not in fact involve specific acts in interstate commerce or through the mails, but are contending that the activities of these companies do not, as a matter of law, constitute a "business in interstate com-

merce" (R. 120, 124) and therefore are not subject to regulation by the federal government. Whether or not these service activities constitute a business in interstate commerce, such as would result in a violation of section 4 (a) (5) of the Act, is not now in issue in this case. The federal power extends to specific acts done in interstate commerce and through the mails, and sections 4 (a) (1), (2), (3), and (4) are a clear exercise of this federal power. It is this federal power which is applicable under section 4 (a) (2) to the service activities of Ebasco and American Gas. The services may initially be formulated and prepared in New York, but they remain embryonic and inchoate and of no commercial value until they are rendered and sold in interstate commerce. These services are not spasmodic or occasional; they are rendered constantly and recurrently in the ordinary course of a business of substantial magnitude.

Bond and Share has itself heretofore recognized the interstate character of its service business. In a letter dated May 8, 1934, to the Utah State Commission, E. W. Hill, vice president of Bond and Share, stated (R. 1048):

> Electric Bond and Share Company's services to its client companies either are rendered in New York City or constitute transactions in interstate commerce, and, therefore, this company is not doing any intrastate business in Utah and is not "doing business" in Utah in such a way as to come within the purview of the Utah Corporation Franchise Tax Act. We are, however, more concerned about the principle involved than about any taxes which might

be levied under the provisions of the Act and the enclosed returns are, therefore, filed without conceding that such returns should be filed.

Both Ebasco and American Gas in fact conduct a service business consisting largely of activities undertaken in interstate commerce and through the mails (R. 2239–2242, finding 53). Ebasco is a service organization with a staff of 361 persons (R. 1066–1069). It renders systematic and continuous service of a specialized and technical character to the serviced companies upon every phase of the utility business (R. 362). American Gas has a technical staff of 260 persons (R. 443–444, 1960) prepared to handle every type of problem of each of its subsidiaries (R. 436, 443–444). These New York City central offices of Ebasco and American Gas keep in contact with the operating companies by voluminous correspondence, constant interchange of reports, and frequent visits (R. 363–365, 444), all of which involve continual interstate movement and communication.

As the companies served by Ebasco are more scattered and are spread over a much wider area than those served by American Gas, Ebasco has divided its serviced companies into regional groups. A senior operating sponsor has general supervision of the services rendered to each group. He has the assistance of specialized sponsors, including an accounting sponsor, engineering sponsor, budget sponsor, rate sponsor, and sales sponsor, each of whom is an expert in his field. Apparently one-sixth of the entire Ebasco staff are sponsors (R. 1066–1069). The operating sponsor sees all the correspondence and reports from the serviced

companies, and he maintains contact between the serviced companies and the departments of Bond and Share (R. 364). The operating sponsors and the departmental sponsor specialists spend part of their time in New York and part of their time in the field (R. 363–364). The operating sponsors are in active and continuous touch with the operating companies under their charge by active correspondence, telephone, and telegraphic communication, and frequent visits to their properties (R. 363). In cooperation with the specialized sponsors, the operating sponsors act as liaison between the operating companies and the specialized departments of Ebasco (R. 363). Assisted by departmental sponsor specialists, the operating sponsors are continuously "pooling information" garnered from the serviced companies (R. 1806), studying the problems of the serviced companies, and preparing reports, analyses, and recommendations which are transmitted across state lines to the serviced companies. (R. 364.) The work of each specialized department in handling the matters within its respective sphere requires the constant use of the channels of interstate commerce.

The *accounting department* of Ebasco at New York designs, in great and minute detail, accounting procedures, systems, and reports which are transmitted to the serviced companies (R. 366) of necessity through the channels of interstate commerce. It prepares statements for stockholders, stock exchanges, governmental authorities, and others and sends them to the operating companies for their use (R. 366–367). It advises the client companies on their accounting problems and the accounting requirements of regulatory commis-

sions (R. 367). It prepares and sends to the client companies comparative analyses of their accounts and studies of comparative performance and trends (R. 367). It prepares periodic and special bulletins and reports for general distribution among its serviced companies (R. 367). Accounting sponsors spend much of their time in the field actively devoting themselves to the affairs of the operating companies (R. 363).

The *engineering department* instructs the serviced companies upon all engineering problems involved in the operation and development of their systems and their interconnections (R. 368). Representatives are sent into the field to study local problems (R. 1661–1663). The results of the field work are studied in the New York office and reports are then sent to the client companies (R. 368). The engineering department prepares and distributes standard specifications for equipment and supplies (R. 369, 1543 ff.). It prepares reports, memoranda, and engineering letters which are distributed by mail across state lines to all serviced companies (R. 370, 1552 ff.).

The *budget department* sends to the client companies "a complete system of budgetary control" and constantly advises as to its use (R. 373). Various budget forms, including sales, operating, construction, cash, and master budgets, cash control and conservation reports, together with instructions regarding their use, are a part of this service. After the budgets are prepared, they are reviewed and criticized by the budget department, and errors and inconsistencies are brought to the attention of the client companies. From month to month the budget department checks the adher-

ence of the serviced companies to their budgets and directs their attention to significant departures (R. 373–374). Budget sponsors spend a substantial portion of their time in the field (R. 363).

The *insurance department* negotiates policies for the serviced companies after a review of their operating requirements. It prepares and distributes to the serviced companies by mail periodic and special reports dealing with their insurance problems (R. 375).

The *statistical department* prepares and distributes statistical and economic studies for use of the serviced companies. It collects articles, technical reports, and other news items from trade and other publications and distributes copies to the serviced companies (R. 1473ff.). It prepares or assists in the preparation of annual reports or other information for the serviced companies and for investors, bankers, and others outside the State of New York upon appropriate request (R. 375–376). In fact, the statistical department issues or prepares for issue substantially all publications of the serviced companies (R. 1747–1749).

The *tax department* transmits tax questionnaires to the serviced companies and on the basis of answers received prepares federal returns (R. 377). Similarly it reviews and generally prepares state tax returns which are sent to the serviced companies for examination and filing (R. 377). Representatives make field visits to assist their companies on tax matters (R. 377). The department assists in the preparation of claims for refunds and abatements (R. 377). The department prepares and distributes through the mails special and periodic reports affecting the tax liabilities of

the companies (R. 378). The department prepares a report form on which the serviced companies transmit to it a monthly record of all taxes borne by them (R. 1449ff.).

The *rate department,* both in the field and in New York City, makes detailed rate studies and analyses and on the basis thereof designs and transmits rate schedules to the serviced companies (R. 1665). The rate department assists the companies in negotiating large consumer contracts and agreements for the interchange of power (R. 379). It assists in the preparation and presentation of materials before regulatory commissions (R. 379). It prepares periodic and special studies and reports on rate problems and transmits them through the mails to the serviced companies (R. 379). Members of the rate department spend approximately half of their time visiting the properties of the serviced companies (R. 379).

The *sales department* renders continuous commercial and sales services to the serviced companies. It formulates and submits sales policies and programs to the operating companies, based both upon studies in the field and at New York (R. 380). It assists in the carrying out of sales programs by correspondence and by visits (R. 1686ff., 1717). It negotiates prices and discounts upon appliance purchases (R. 380). It prepares and distributes to the companies reports showing the results of sales activities (R. 379–382). Its experts and specialists spend approximately half of their time visiting the properties of the operating companies (R. 381).

The *secretarial department* maintains copies of corporate minutes and related records of the serviced companies and advises the serviced companies

on all matters concerning corporate procedure (R. 382).

The *treasury department* maintains the cash books of the serviced companies which maintain bank accounts in New York (R. 382). Monthly cash reports made pursuant to the accounting procedure recommended by Ebasco enable the treasury department to keep in New York such funds as are not required by the companies for local needs. It makes disbursements for the account of the serviced companies as required and arranges the temporary investment of their funds (R. 383). Formal advice as to each disbursement made is communicated by means of the mails to the serviced companies (R. 383). The treasury department supplies credit information to the serviced companies (R. 383).

The *corporate department* assists in the preparation of papers required by mortgage trustees. It prepares studies and analyses of corporate and financial structures which are transmitted to the serviced companies, and assists in connection with financial programs, loans, securities, acquisitions, and disposal of properties, both advising and reporting to the serviced companies and assisting them in negotiating such financing and refinancing plans (R. 384–385).

Services substantially similar to those above described are rendered by American Gas to subsidiary operating companies within its group (R. 443–467). American Gas, however, unlike Ebasco, does not divide its companies into regional groups for administrative purposes. This is unnecessary as its subsidiaries are all located in nine substantially contiguous states. Following the general method

of the organization of Ebasco, but varying in minor detail, the staff of American Gas is also organized into specialized departments prepared to handle virtually every type of problem of the subsidiary operating companies (R. 444), except their financing requirements, which have invariably been handled by the Bond and Share service organization (R. 461–467).

Certainly these services maintained by Ebasco and American Gas involve in no uncertain way the constant use of the mails and the means and instrumentalities of interstate commerce. Virtually every report, letter, message, or suggestion from the centralized technical staff in New York to the serviced companies outside of New York moves in the mails and in interstate commerce. Exhibits 82 (R. 1456ff.), 83 (R. 1543ff.), 84 (R. 1552ff.), and 106 (R. 1941ff.), covering approximately 150 pages of the record (R. 1456–1587, 1941–1956), offer at best an incomplete and abbreviated catalogue of merely the data distributed by Bond and Share and American Gas to all their operating companies collectively (R. 1456–1587, 1941–1956). It would be impracticable to attempt a comprehensive list of items transmitted to or from individual companies even for a period of one month (R. 1956.) It is difficult to imagine a business more predominantly interstate than the service business of Ebasco and American Gas.

But the services of American Gas and Ebasco are not confined to the giving or transmission of intangible ideas, assuming that the transmission of bulky reports, booklets, pamphlets, etc. may be so designated. Both organizations are active in purchasing supplies and equipment in interstate com-

merce and directing shipments of such supplies and equipment across state lines.

The purchasing departments of these companies negotiate volume purchase contracts for the use of all of their subsidiaries, providing either for specified discounts or for discounts based upon the aggregate purchases of all the subsidiary companies (R. 370–371, 450–451). These departments also negotiate special contracts for the purchase of special equipment and supplies (R. 371, 452). Ebasco usually signs such special contracts as purchasing agent for the serviced company (R. 371, 1596, 1598, 1604). American Gas signs either in its own name or in the name of the operating company (R. 452). Ebasco at times arranges for the inspection of factory production on orders placed by Ebasco or by the serviced company for large apparatus (R. 372). It classifies and routes freight shipments and negotiates freight rates. It consolidates small shipments to include them in carload lots (R. 372).

The goods purchased by these service organizations in their own names or in the names of their serviced companies, or ordered by the serviced companies on volume contracts negotiated by the service organization, are shipped directly from the manufacturers or jobbers to the operating companies; such shipments are always interstate except when the factory or jobber happens to be located in the state of the company serviced (R. 372, 452). A substantial majority of such shipments to Ebasco clients are clearly interstate (R. 372). A substantial, possibly a preponderant, portion of the shipments to American Gas companies are interstate (R. 453).

During the last six years, which cover the period of the depression, Bond and Share has negotiated contracts for its serviced companies for the purchase of 92 million dollars of goods (R. 1589). More than 46 million dollars of goods are conceded to involve interstate commerce (R. 372). Thus Bond and Share directs a traffic in goods in interstate commerce averaging over $7,000,000 a year, not counting the purchases in interstate commerce made by the operating companies without Bond and Share's intervention but under the guidance and advice of Bond and Share sponsors (R. 1167). American Gas has similarly negotiated purchase contracts for substantially over half the total of 88 million dollars of purchases of its serviced companies during the same six-year period (R. 1933).

Both Ebasco (including its subsidiary Phoenix) and American Gas maintain extensive engineering and construction services. These divisions make preliminary plans, specifications, and cost estimates of proposed construction (R. 386–387, 457), frequently, if not invariably, suggesting the projects to be investigated and later built. This is vividly revealed, for example, in the recent report made by Kansas Gas and Electric Company on all construction and reconstruction undertaken upon its properties from 1910 through 1930 (R. 1769, 1771, 1774ff.). The engineering and construction divisions arrange the purchases and shipment of all necessary materials and equipment for construction work handled by them (R. 388, 457, 1179). A large portion of such purchases and shipments are of necessity interstate. The central organizations in New York supervise the work through frequent and regular communication with the field staffs in

the various states where work is being simultaneously performed. The New York offices transmit plans, designs, instructions, information, and funds from New York to the field (R. 389, 458). In the past ten years construction costing the serviced companies more than 180 million dollars, exclusive of the construction fee charged by Phoenix, was performed by Phoenix, Bond and Share's wholly owned subsidiary (R. 1647). An additional sum of approximately 420 million dollars was spent by serviced companies upon construction during this period (R. 1647); some of this work was let to independent contractors and a large part undertaken by the serviced companies themselves pursuant to designs and specifications drawn by Bond and Share (R. 413, 1768–1809, 2098–2101). For supervising work let to an independent contractor, Phoenix collected a fee one-half as large as that collected where Phoenix itself took complete charge of the job (R. 1180, 1182). Continual communication between New York and the field is necessary, and is maintained, whether or not an independent contractor is employed. American Gas handles all major engineering work for its subsidiaries; and all orders for major apparatus and equipment are placed by American Gas in accordance with its own engineering specifications (R. 453).

The extensive securities and financial services rendered by the Bond and Share service organization for all subsidiary companies, including the American Gas group, have already been considered to some extent in the discussion of the offerings of securities (see pp. 103–108, *supra*); further discus-

sion of their interstate character is not necessary here.

If these various services of Bond and Share and American Gas, involving the direction of purchases and shipments of goods in interstate commerce aggregating several millions of dollars per annum and involving the sale of intangible services, information, and reports, for fees and charges running into hundreds of thousands and even millions of dollars a year, do not constitute interstate commerce, then interstate commerce is an artificial conception having no relation to the practical facts of business. Such a conception of interstate commerce has no basis in fact or in constitutional law.

V. Defendants' Threatened Violations of Section 4 (a) (1), (2), (3), (4), and (6)

For the convenience of the Court, we summarize briefly the acts done or threatened by each of the several defendants which constitute violations of section 4 (a) as found by the District Court.

A. BOND AND SHARE

1. SECTION 4 (a) (1) AND (6)

Bond and Share is a non-registered holding company and does not intend to register voluntarily under the Act (R. 270; 2230, findings 29 and 30). Bond and Share is not itself an operating company, but through its voting stock ownership and control of its several intermediate holding companies, it controls securities of its subsidiary operating companies which sell, transmit, and transport electric energy and gas in interstate commerce and own and operate utility assets for that pur-

pose (R. 2231–2232, finding 32). Bond and Share also directly owns securities in the form of bonds of a number of its operating-company subsidiaries which are so engaged in the transmission and transportation of electric energy and gas in interstate commerce (R. 847ff; 2221, finding 10). A substantial portion, aggregating 3.7 billion kwh in 1934, or more than 30 per cent of all the electric energy generated by the operating subsidiaries of Bond and Share, is transported across state lines (see pp. 101–102, *supra*). And large and substantial amounts of gas are transported in interstate commerce by operating subsidiaries of Bond and Share, principally by subsidiaries of United Company (R. 2235–2237, findings 42–49; see pp. 102–103, *supra*). Bond and Share is consequently continuously violating section 4 (a) (6) by reason of the fact that its subsidiary operating companies are continuously doing the acts enumerated in section 4 (a) (1).

2. SECTION 4 (a) (2) AND (6)

Bond and Share directly owns securities of its subsidiary companies Ebasco and American Gas, which by use of the mails and channels of interstate commerce perform service, sales, and construction contracts for public-utility companies (R. 2237–2245, findings 50–56). The services now being performed by these three subsidiaries have already been described in this Factual Summary (pp. 75–101, 108–122, *supra*). Bond and Share is continuously violating section 4 (a) (6) by reason of the fact that these subsidiary companies are continuously doing the acts described in section 4 (a) (2).

Bond and Share, directly and through its subsidiaries, has in the past as a part of the normal and ordinary business of itself and of its subsidiaries, by use of the mails and channels of interstate commerce, made public offerings for sale or exchange of its own securities, and those of its subsidiary companies, and has acquired utility assets of its subsidiary companies and of other public-utility and holding companies (R. 2245–2247, findings 57–60). Indeed, each of the defendants has specifically alleged that the activities forbidden by paragraphs (3), (4), and (6) of section 4 (a) are essential to the normal and ordinary conduct of the business of each of the defendants and the use, conservation, and development of its properties (R. 159; 2230, finding 30). Bond and Share, through Ebasco, is equipped, and is under commitment, to carry on such activities for its subsidiary companies (R. 415, 1171; 2246, finding 57). It is admitted that each of the defendants, unless otherwise ordered by a final decree in this proceeding, not thereafter reversed or vacated, intends to continue without registering to engage in such activities and transactions (R. 270; 2247, finding 60). Indeed, since the filing of the Government's bill and before the case was heard by the District Court, two subsidiary companies of Bond and Share had acquired the utility assets of their own public-utility subsidiaries (R. 266, 343), and another subsidiary company of Bond and Share had taken steps by use of the mails and channels of interstate commerce to make a public offering for the exchange of certain of its securities (R. 417).

Bond and Share as a non-registered company has, therefore, violated section 4 (a) (6) in that certain of its subsidiary companies, since December 1, 1935, have done the acts described in section 4 (a) (3) and (4). Bond and Share, having in the past itself carried on the activities mentioned in section 4 (a) (3) and (4) as a normal and ordinary part of its business, and being equipped and under commitment through Ebasco to carry on such business for its subsidiaries, threatens directly to violate section 4 (a) (3) and (4). Bond and Share is further threatening to violate section 4 (a) (6) by reason of the fact that its subsidiary companies may at any time as a part of their ordinary and normal business do the acts described in section 4 (a) (3) and (4).

B. HOLDING DEFENDANTS

There are seven non-exempt holding defendants, American Gas, American Company, National Company, Electric Company, United Company, Lehigh Company, and Power Company (R. 265). United Company and Power Company are sub-holding companies within the Electric Company system (R. 292, 293); and Lehigh Company is a sub-holding company in the National Company system (R. 297). The holding defendants are not themselves operating public-utility companies but have voting stock control over operating public-utility companies so as to be holding companies as defined in the Act (R. 265). None of the holding defendants has registered or intends voluntarily to register (R. 270; 2230, finding 30).

1. SECTION 4 (a) (1) AND (6)

American Gas, and American, National, and Electric Companies, through their subsidiary operating companies sell and transmit electric energy in interstate commerce and own and operate utility assets for such purposes (American Gas (R. 576–610; 2232, finding 33); American Company (R. 490–522; 2233, finding 34); National Company (R. 552–576; 2233, finding 35); Electric Company (R. 522–552; 2233, finding 36); see also pp. 101–102, *supra*). Power Company and Lehigh Company, through their respective subsidiaries, Idaho Power Company and Pennsylvania Power & Light Company, sell and transmit electric energy in interstate commerce and own and operate utility assets for that purpose (Power Company (R. 525, 529–534; 2234, finding 37); Lehigh Company (R. 570–576; 2234, finding 38)).

American Company through its subsidiaries, Portland Gas & Coke Company, Superior Water, Light and Power Company, Central Arizona Light and Power Company (R. 621–622, 633–635; 2237, finding 46); and Electric Company and its subholding company, United Company, through the operating subsidiaries of United Company (R. 622–633; 223; findings 44 and 45), sell and transport gas in interstate commerce and own and operate utility assets for that purpose.

2. SECTION 4 (a) (2)

American Gas, in violation of section 4 (a) (2), is engaged, by use of the mails and the means and instrumentalities of interstate commerce, in the performance of service, sales, and construction con-

tracts for public-utility companies (R. 2243–2245, findings 55 and 56; see pp. 75–78, 108–113, 117–122, *supra*).

3. SECTION 4 (2) (3), (4), AND (6)

As has been pointed out (see p. 108, *supra*), all of the defendants, including all of the holding defendants, have admitted that it is essential to the normal conduct of the business of each of them to use the mails and the channels of interstate commerce to make public offerings of their securities and the securities of their subsidiary companies and to acquire, directly or through their subsidiaries, securities or utility assets of public-utility and holding companies (R. 159; 2245–2247, findings 57–60). Unless restrained by a final decree in this proceeding, they will continue to do so without registering (R. 270; 2230, finding 30). Since the beginning of these proceedings, American Company (through its subsidiary, The Montana Power Company) and Electric Company (through its subsidiary, Idaho Power Company) have made acquisitions of utility assets (R. 343); and National Company and its sub-holding company, Lehigh Company, have taken steps through their subsidiary company, Lehigh Valley Company, to make a public offering through the mails and the channels of interstate commerce for the exchange of securities of Lehigh Valley Transit Company (R. 417).

C. HOLDING-OPERATING DEFENDANTS

Three of the holding-operating defendants—Utah Power & Light Company (R. 523–529), Nebraska Power Company (R. 511–513), and Pacific

Power & Light Company (R. 493–495) — are non-registered holding companies which are also operating companies selling and transmitting electric energy in interstate commerce and owning and operating utility assets for such purpose in violation of section 4 (a) (1) (R. 2234–2235, findings 39–41). Nebraska Power Company (R. 513) and Pacific Power & Light Company (R. 490, 492–493) also do such acts through subsidiary companies in violation of section 4 (a) (6) (R. 2234–2235, findings 40 and 41).

The remaining holding-operating defendants—United Gas Public Service Company (R. 622–633; 2237, finding 48) and Houston Gulf Gas Company (R. 626–628; 2237, finding 49)—are non-registered holding companies which are also operating companies selling and transporting gas in interstate commerce and owning and operating utility assets for such purposes in violation of section 4 (a) (1) and (6).

It is essential to the conduct of the normal and ordinary business of all of the holding-operating defendants directly and through their subsidiaries to make public offerings, in interstate commerce and through the mails, of their own and their subsidiaries' securities and to make acquisitions, in interstate commerce and through the mails, of securities and utility assets of their subsidiaries and of public-utility and holding companies (R. 159; 2247, finding 59). Unless restrained, the holding-operating defendants will continue without registering to do these acts directly and through their subsidiaries in violation of section 4 (a) (3), (4), and (6) of the Act (R. 2230, finding 30, 2247, finding 60).

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SUPREME COURT OF THE UNITED STATES.

No. 636.—October Term, 1937.

Electric Bond and Share Company, et al., *vs.* Securities and Exchange Commission, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 28, 1938.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Securities and Exchange Commission brought this suit to enforce the provisions of Sections 4 (a) and 5 of the Public Utility Holding Company Act of 1935. 49 Stat. 803, 812, 813. These sections provide for registration with the Commission of holding companies, as defined, (Sec. 5(a)), and prohibit the use of the mails and the instrumentalities of interstate commerce to those companies which fail to register. Sec. 4(a). Section 5(b) provides for the filing of a registration statement giving information with respect to the organization, financial structure and nature of the business of the registrant, together with various details of operations.

Defendants, including intervenors, contested the validity of these provisions and sought by cross bill a declaratory judgment that the Act was invalid in its entirety, as being in excess of the powers granted to Congress by Section 8 of Article I, and in violation of Section 1 of Article I and of the Fifth and Tenth Amendments, of the Constitution of the United States. The District Court sustained the validity of Sections 4 (a) and 5, and granted an injunction accordingly. The cross bill was dismissed for want of equity and for lack of any actual controversy within the meaning of the Federal Declaratory Judgment Act of 1934. 18 F. Supp. 131. The Circuit Court of Appeals affirmed the decree. 92 F. (2d) 580. Certiorari was granted, — U. S. —.

The suit was brought against the Electric Bond and Share Company and fourteen associated public utility companies. Of these, it appears that seven have ceased to be holding companies within

the meaning of the Act, two[1] before the cause was heard by the District Court and five[2] since the decree. The remaining companies against whom the decree of injunction runs are Electric Bond and Share Company, American Gas and Electric Company, American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation, Lehigh Power Securities Corporation, Utah Power & Light Company, and Pacific Power & Light Company.

The decree provides in substance, as to each of these defendants, that after a day specified and until such defendant shall cease to be a holding company as defined in the Act, or shall register with the Securities and Exchange Commission as provided in Section 5 (a), it shall not carry on any of the activities in interstate commerce or through the mails which are forbidden to non-registered holding companies by Paragraphs (1), (2), (3), (4) and (6) of Section 4 (a). The provisions of Sections 4 (a) and 5 are set forth in the margin.[3]

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[1] Idaho Power Company and The Montana Power Company.

[2] United Gas Corporation, United Gas Public Service Company, Houston Gulf Gas Company, Nebraska Power Company, and Power Securities Company.

[3] "Sec. 4. (a). After December 1, 1935, unless a holding company is registered under section 5, it shall be unlawful for such holding company, directly or indirectly—

"(1) to sell, transport, transmit, or distribute, or own or operate any utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

"(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

"(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

"(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

"(5) to engage in any business in interstate commerce; or

"(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5), inclusive, of this subsection.

. . . . . .

"Sec. 5. (a) On or at any time after October 1, 1935, any holding company or any person purposing to become a holding company may register by

The decree further provides that the injunction and the dismissal of the cross bill shall be without prejudice "to any rights or remedies in law or in equity" which defendants may have after registration, and leaves defendants free to challenge the validity of any of the provisions of the Act other than Sections

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filing with the Commission a notification of registration, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. A person shall be deemed to be registered upon receipt by the Commission of such notification of registration.

"(b) It shall be the duty of every registered holding company to file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations or order, a registration statement in such form as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such registration statement shall include—

"(1) such copies of the charter or articles of incorporation, partnership, or agreement, with all amendments thereto, and the bylaws, trust indentures, mortgages, underwriting arrangements, voting-trust agreements, and similar documents, by whatever name known, of or relating to the registrant or any of its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

"(2) such information in such form and in such detail relating to, and copies of such documents of or relating to, the registrant and its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

"(A) the organization and financial structure of such companies and the nature of their business;

"(B) the terms, position, rights, and privileges of the different classes of their securities outstanding;

"(C) the terms and underwriting arrangements under which their securities, during not more than the five preceding years, have been offered to the public or otherwise disposed of and the relations of underwriters to, and their interest in, such companies;

"(D) the directors and officers of such companies, their remuneration, their interest in the securities of, their material contracts with, and their borrowings from, any of such companies;

"(E) bonus and profit-sharing arrangements;

"(F) material contracts, not made in the ordinary course of business, and service, sales, and construction contracts;

"(G) options in respect of securities;

"(H) balance sheets for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

"(I) profit and loss statements for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

"(3) such further information or documents regarding the registrant or its associate companies or the relations between them as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

"(c) The Commission by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of in-

4(a) and 5. The dismissal of the cross bill is also declared to be without prejudice "to any rights or remedies in law or in equity" which the intervening defendants "may have or be entitled to upon the Act being made applicable to them by the registration of any holding company of which they are subsidiary companies". All rights of defendants, including intervenors, are thus fully reserved with respect to the application to them of any provision of the Act outside of those contained in the particular sections which are enforced by the decree.

Petitioners insist that the Act is invalid as a whole; that the provisions of Sections 4(a) and 5 are not separable from the remainder; that these provisions, if separately considered, do not constitute a valid regulation of interstate commerce and the mails; and that the cross bill presented a controversy upon the merits of which the defendants, including intervenors, were entitled to the judgment of the court.

First.—The initial question is whether the defendant companies, against which the decree for injunction runs, are engaged in activities which bring them within the ambit of congressional authority. Upon this point there seems to be no serious controversy, and for the purpose of the present decision we do not find it necessary to make a comprehensive statement of the corporate setup and operations of the respective defendants. The facts were fully set forth in an elaborate stipulation which underlay the findings of fact of the trial court. A brief statement addressed to the point now under consideration will suffice.

Electric Bond and Share Company is styled in the findings as "the top holding company" in "a holding-company system" in which all the other defendants and intervening defendants together with numerous other companies are subsidiaries. Electric Bond

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vestors or consumers, may permit a registrant to file a preliminary registration statement without complying with the provisions of subsection (b); but every registrant shall file a complete registration statement with the Commission within such reasonable period of time as the Commission shall fix by rules and regulations or order, but not later than one year after the date of registration.

"(d) Whenever the Commission, upon application, finds that a registered holding company has ceased to be a holding company, it shall so declare by order and upon the taking effect of such order the registration of such company shall, upon such terms and conditions as the Commission finds and in such order prescribes as necessary for the protection of investors, cease to be in effect. The denial of any such application by the Commission shall be by order."

and Share Company owns substantial minorities of the voting stocks of the defendants American Gas and Electric Company, American Power & Light Company, National Power & Light Company, and Electric Power & Light Corporation. These companies in turn own directly or through subholding companies substantial majorities, in some cases approximating complete ownership and in all cases sufficient to insure voting control, of the common stocks of operating gas and electric utilities. The "electric operations" of subsidiaries in the Bond and Share system are conducted in thirty-two States. Some operate only within a single State, some in two or more States, transmitting energy across state lines for their own account, and some sell energy at wholesale in interstate commerce.

Until shortly prior to the institution of this suit Electric Bond and Share Company rendered services to both holding and operating companies under service contracts. After the approval of the Act, it formed a wholly owned subsidiary, Ebasco Services Incorporated, to take over the servicing of the operating companies and the servicing of the holding companies was discontinued. The performance of service contracts by Ebasco, operating as a subsidiary and on behalf of Electric Bond and Share Company, constitutes an extensive business in rendering continuous expert, specialized, and technical service, advice, and assistance to the serviced companies upon every phase of the utility enterprise. Phoenix Engineering Corporation, a wholly owned subsidiary of Ebasco, performs construction work for subsidiary public-utility companies in the Bond and Share system. The American Gas and Electric Company also performs services for subsidiary operating companies.

We need not go further in the description of the operations of these Companies, as petitioners concede that the carrying out of these service contracts, as found by the trial court, involves continuous and extensive use of the mails and instrumentalities of interstate commerce, although petitioners are careful to qualify the concession by saying that they agree with the trial court that "this is not to say that the entire business of Ebasco or American Gas constitutes interstate commerce and is therefore subject to unlimited federal regulation".

Petitioners also state with respect to American Power & Light Company, National Power & Light Company, and Electric Power

& Light Corporation, that while it is insisted that these are simply investment holding companies and that their business as such is not interstate commerce, they may "from time to time engage in transactions in interstate commerce or may use the instrumentalities of interstate commerce in particular transactions, such as the distribution of securities, in such manner that those particular activities become the subject of federal regulation".

The trial court found that one or more subsidiary electric-utility companies of Lehigh Power Securities Corporation "are regularly engaged in selling, purchasing, or transmitting some electric energy across state lines"; and that Utah Power & Light Company and Pacific Power & Light Company are both holding companies and electric-utility companies and that the transmission of electric energy across state lines is part of the enterprise of each.

In the light of the findings supported by the stipulation, we perceive no ground for a conclusion that the defendant companies which are enjoined are not engaged in activities within the reach of the congressional power.

Second.—Challenging the validity of the Act in its entirety, petitioners contend that Sections 4(a) and 5 cannot be separated from the other provisions of the Act and thus be separately sustained and enforced. They urge that these sections are purely auxiliary to the subsequent or "control provisions" of the Act (Sections 6 to 13); that the object of this suit is to compel submission to an integrated system of control and that the sole question is whether the Act as a whole, "or enough to accomplish its general plan", is constitutional. They insist that this question must be determined before they may be compelled to register.

(1) In this branch of the case, petitioners address their argument to the *intent* of Congress, rather than to its *power*. But Congress has defined its intent as to separability. Section 32 of the Act provides:

"If any provision of this title[4] or the application of such provision to any person or circumstances shall be held invalid, the remainder of the title and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby".

This provision reverses the presumption of inseparability—that the legislature intended the Act to be effective as an entirety or

[4] The "title" is "Title I—Control of Public-Utility Holding Companies".

not at all. Congress has established the opposite presumption of divisibility. *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 242; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 184; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210, 235. Congress has thus said that the statute is not an integrated whole, which as such must be sustained or held invalid. On the contrary, when validity is in question, divisibility and not integration is the guiding principle. Invalid parts are to be excised and the remainder enforced. When we are seeking to ascertain the congressional purpose, we must give heed to this explicit declaration.

(2) It is evident that the provisions of Sections 4(a) and 5 are not so interwoven with the other provisions of the Act that there is any inherent or practical difficulty in the separation and independent enforcement of the former while reserving all questions as to the validity of the latter. The administrative construction of the statute was formulated in that view. Rule 4 of the Commission provided that any person, in filing any statement under the Act, might include an express reservation of constitutional and legal rights. It was on the basis of that construction that this suit was prosecuted and was limited to the enforcement of Sections 4(a) and 5. All rights and remedies as to all other provisions of the Act are, as we have seen, expressly reserved to the defendants by the decree. Nor can it be said that this reservation is illusory. If this decree is affirmed, it will constitute a specific adjudication that registration will be without prejudice to future challenge of the validity of any provision of the Act, or requirement of the Commission, outside of Sections 4(a) and 5. It is idle to contend that registration pursuant to the decree will subject the defendants to the Act as an integrated whole or bring into operation against them what the decree expressly excludes.

(3) Although there is no practical obstacle to the separate enforcement of the provisions of Sections 4(a) and 5, the argument is pressed that in reason and design there is an essential unity of these provisions and the so-called "control provisions" which forbids such enforcement. Petitioners urge that Sections 4(a) and 5 "merely implement the system of controls"; that the policy of the Act as declared in Section 1(c) is to compel "the simplification and the elimination of holding company systems"; and that the objective cannot be attained by informatory processes but only by such regulation or control as will "eliminate" the evils.

The Government replies that while the other provisions are applicable only to registered companies and their subsidiaries, Sections 4(a) and 5 are drafted so as to be operative independently and that the registration provisions themselves constitute "an effective instrument of informatory regulation". "If, for example", argues the Government, "section 11 dealing with corporate reorganizations were adjudged invalid, there is no inherent reason why the other regulatory provisions could not be enforced as the Congress provided. And if section 13 dealing with service contracts were adjudged invalid, there is no inherent reason why the registration provisions, or sections 6 and 7 regulating security issues, or sections 8, 9 and 10 dealing with utility acquisitions, could not be administered in accordance with their terms". "Likewise", it is said, "the purpose and effect of the registration provision—regulation by the informatory process—are the same whether registration is considered as a separate statute regulating utility holding companies, or as but one part of a comprehensive statute containing many different regulations of utility holding companies". Moreover, as observed by the District Court, Section 1(c) in its entirety negatives any conclusion that the simplification and elimination of holding companies "is the sole policy or the whole end and object of the Act which, as stated, is to meet the problems and eliminate the evils, as enumerated in this section, connected with public utility holding companies", and thus "simplification and elimination" are but a means and not "the exclusive means" deemed to be essential for the purpose of effectuating such policy "in whole or in-so-far as may be constitutionally possible".

We think that the manner in which the Act is framed and the variety of provisions it contains, when viewed in the light of the presumption of divisibility, justify that conclusion. The fact that registration underlies the application of subsequent requirements of the statute does not prevent the provisions of Section 4(a) and 5 from having a purpose and a value of their own. Section 5 not only provides in paragraph (a) for the filing of a "notification of registration" but also requires by paragraph (b) every registered holding company to submit, within a reasonable time after registration, a "registration statement" containing a variety of detailed information as to corporate structure and activities. Thus Section 5(b) is itself a "control" provision, which is immediately opera-

tive. The duty to supply the described information is separately and definitely prescribed.

It cannot be denied that a requirement of this sort is a regulation which Congress could have regarded as important in itself and could have made the subject of a separate statute. The fact that it is found in a statute imposing other regulations, or that it precedes the application of the others, does not deprive it of its essential character and its capacity to stand alone. Regulation requiring the submission of information is a familiar category. Information bearing upon activities which are within the range of congressional power may be sought not only by congressional investigation as an aid to appropriate legislation, but through the continuous supervision of an administrative body. See *Interstate Commerce Commission* v. *Brimson,* 154 U. S. 447, 474; *Interstate Commerce Commission* v. *Goodrich Transit Company,* 224 U. S. 194, 211; *American Telephone & Telegraph Co.* v. *United States,* 299 U. S. 232, 235, 237. Congress may use this method in connection with a comprehensive scheme of regulation, as, for example, in the case of the Interstate Commerce Commission and the Federal Communications Commission; or Congress may employ this informatory process independently. An illustration of the latter is found in the statute relating to newspapers and periodicals, enjoying the privileges accorded to second class mail, which requires an annual statement setting forth the names and addresses of the editor, publisher, business manager, owner, and, in case of ownership by a corporation, the stockholders, and also the names of known bondholders or other security holders, together with a statement as to circulation. 39 U. S. C. 233. See *Lewis Publishing Co.* v. *Morgan,* 229 U. S. 288.

Petitioners refer to the limitations upon publicity contained in Section 22 and contrast this provision with that of the Securities Act of 1933, Section 6(d), 48 Stat. 74, 78. But Section 22 provides that the information shall be available to the public when in the judgment of the Commission its disclosure would be in the public interest or the interest of investors or consumers. The limitations are plainly intended to safeguard particular information which may be regarded as of a private or confidential character and as not directly concerning the public interest. They do not detract from the value which may be deemed to attach to the requirement that the described information should be furnished, whether

as an aid to legislation or as facilitating administrative supervision or as securing a desirable publicity.

Both parties invoke the legislative history of the Act. Petitioners contend that this shows that control, not publicity, was intended. The Government insists that the legislative history supports the presumption of separability. It is unnecessary to review the details of the arguments or the cited statements from the legislative halls. The Act speaks for itself with sufficient clarity. The Government points to six groups of regulatory provisions contained in the Act, viz., registration (Sections 4 and 5); issuance of securities (Sections 6 and 7); acquisition of securities and utility assets (Sections 8, 9 and 10); corporate simplification and reorganization (Section 11); service contracts and other inter-company transactions (Sections 12 and 13); and reports and accounts (Sections 14 and 15). We see nothing in the legislative history of the Act which requires the conclusion that all these groups were intended to constitute a unitary system, no part of which can fail without destroying the rest. On the contrary, we think that the intent of Congress is that these various groups of regulations, as well as particular provisions of each group, should be regarded as separable so that, if any such group or provision should be found to be invalid, that invalidity should not extend to the remaining parts if by reason of their nature and as a practical matter they could be separately sustained and enforced.

Congress provided in Section 18(f) that the Commission might bring an action to enforce compliance with the Act or any rule, regulation or order thereunder, and that upon a proper showing a permanent or temporary injunction or decree should be granted. In pursuance of that authority, the present action was brought solely to enforce the provisions of Sections 4(a) and 5. We find no basis for holding that these provisions cannot be separately enforced if they are valid and we turn to that question. In view of this conclusion as to separability, it is unnecessary to go through the statute in order to determine whether other provisions are valid or invalid, and we do not intimate that there would not be found in any event a workable system in addition to the registration sections.

Third.—Petitioners contend that, standing by themselves, Sections 4(a) and 5 transgress constitutional restrictions. These sec-

tions have three parts. Section 5(a) provides for the filing of a notification of registration. Section 5(b) makes it the duty of every registered holding company to file a registration statement, with documents and certain detailed information, within a reasonable time after registration. Section 4(a) prescribes the penalty for failure to register under Section 5. As the requirement of information is in itself a permissible and useful type of regulation (*Interstate Commerce Commission* v. *Brimson, supra; Interstate Commerce Commission* v. *Goodrich Transit Company, supra; American Telephone & Telegraph Co.* v. *United States, supra*), the question is whether the particular demand, here assailed, can be validly addressed to the defendants enjoined by the decree, and, if so, whether it exceeds constitutional limits because of the character and extent of the information sought.

The findings of the District Court based upon the stipulation of facts leave no room for doubt that these defendants are engaged in transactions in interstate commerce. That they conduct such transactions through the instrumentality of subsidiaries cannot avail to remove them from the reach of the federal power. It is the substance of what they do, and not the form in which they clothe their transactions, which must afford the test. The constitutional authority confided to Congress could not be maintained if it were deemed to depend upon the mere modal arrangements of those seeking to escape its exercise. Compare *Northern Securities Company* v. *United States,* 193 U. S. 197. We need not now determine to what precise extent these defendants are actually engaged in interstate commerce. It is enough that they do have continuous and extensive operations in that commerce, and Congress cannot be denied the power to demand the information which would furnish a guide to the regulation necessary or appropriate in the national interest. Regulation is addressed to practices which appear to need supervision, correction or control. And to determine what regulation is essential or suitable, Congress is entitled to consider and to estimate whatever evils exist.

Congress has set forth in the Act what it considers to be the factual situation and the need of federal supervision. The following statement is found in paragraph (a) of Section 1:

"Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, (1) their securities are widely marketed and distrib-

uted by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies".

Congress has further declared in paragraph (b) of that section, upon the basis of facts disclosed by the reports of the Federal Trade Commission and of the Committee on Interstate and Foreign Commerce of the House of Representatives, and otherwise ascertained, the circumstances in which the national interest and the interest of investors and consumers may be adversely affected by the operation of public utility holding companies. And after this catalogue of the abuses which may exist in the circumstances described, Congress declares it to be its policy "to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce". Without attempting to state the limits of permissible regulation in the execution of this declared policy, we have no reason to doubt that from these defendants, with their highly important relation to interstate commerce and the national economy, Congress was entitled to demand the fullest information as to organization, financial structure and all the activities which could have any bearing upon the exercise of congressional authority. The regulation found in Section 5(b) goes no further than to require this information and we are of the opinion that its validity must be sustained.

Section 4(a) prescribes the penalty for failure to register under Section 5, and that section as an incident to registration imposes the duty to file the described registration statement. Treating the requirements of Sections 4(a) and 5 as a separable part of the Act, the question is whether that penalty may be validly imposed.

In the imposition of penalties for the violation of its rules, Congress has a wide discretion. Sanctions may be of various types. See *Helvering* v. *Mitchell,* decided March 7, 1938. They may involve the loss of a privilege which would otherwise be enjoyed. *Id.* Note 2. When Congress lays down a valid rule to govern those engaged in transactions in interstate commerce, Congress may deny to those who violate the rule the right to engage in such transactions. *Champion* v. *Ames,* 188 U. S. 321; *United States* v. *Delaware & Hudson Co.,* 213 U. S. 366, 415; *Brooks* v. *United States,* 267 U. S. 432, 436, 437; *Gooch* v. *United States,* 297 U. S. 124; *Kentucky Whip & Collar Co.* v. *Illinois Central Railroad Co.,* 299 U. S. 335, 346, 347. And while Congress may not exercise its control over the mails to enforce a requirement which lies outside its constitutional province, when Congress lays down a valid regulation pertinent to the use of the mails, it may withdraw the privilege of that use from those who disobey. *Champion* v. *Ames, supra; Lewis Publishing Co.* v. *Morgan,* 229 U. S. 288.

In the instant case, the penalty attaches to the use of the instrumentalities of commerce and of the mails by those who, engaged in that use, refuse to submit to Section 5 and thus through registration and the statement which is incident to registration to supply the information which Congress is entitled to demand, and has demanded, with respect to their organization and practices. Each one of the paragraphs of Section 4(a), as related to the requirements of Section 5, is addressed to those in that class. We think that the imposition of such a penalty does not transgress any constitutional provision.

The decree enforces this penalty by injunction as the Act itself authorizes. Section 18(f). The terms of the injunction follow closely the provisions of Section 4(a) and do not extend beyond them. To escape the penalty and the enforcing provisions of the decree, all that the defendants have to do is to register with the Commission and assume, under Section 5, the obligation to file the described registration statement. All their rights and remedies with respect to other provisions of the statute remain without prejudice. Their objections to the affirmative provisions of the decree are untenable.

Fourth.—The District Court did not err in dismissing the cross bill. Defendants are not entitled to invoke the Federal Declaratory

Judgment Act in order to obtain an advisory decree upon a hypothetical state of facts. See *New Jersey* v. *Sargent*, 269 U. S. 328; *United States* v. *West Virginia*, 295 U. S. 463; *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324; *Anniston Manufacturing Co.* v. *Davis*, 301 U. S. 337, 355. By the cross bill, defendants seek a judgment that each and every provision of the Act is unconstitutional. It presents a variety of hypothetical controversies which may never become real. We are invited to enter into a speculative inquiry for the purpose of condemning statutory provisions the effect of which in concrete situations, not yet developed, cannot now be definitely perceived. We must decline that invitation. *Anniston Manufacturing Co.* v. *Davis, supra.*

The decree is affirmed.

Affirmed.

Mr. Justice McReynolds dissents.

Mr. Justice Cardozo and Mr. Justice Reed took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.